

<b>LDC Report</b>		
<b>Officer</b>		<b>Application Number</b>
Hilary Cuddy		2013/5495/P
<b>Application Address</b>		<b>Recommendation</b>
Valentino's Cafe 10 Little Turnstile London WC1V 7DX		Refuse
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
Use of premises as mixed use (Sui Generis) including sandwich bar (A1) and café (A3).		
<b>Assessment</b>		
<p>The application site is located on Little Turnstile, a pedestrian street off High Holborn and Gate Street. The building is located in the Bloomsbury Conservation Area and is identified as making a positive contribution to the area. The property is also located within the Central London Area on a Central London Frontage.</p> <p>The application relates to a four storey building with basement. The sandwich bar and counter are located on the ground floor with seating to the first floor and second floors.</p> <p>The application seeks to demonstrate that the premise has existed in both A1 and A3 use, as a sandwich bar and café for a period of 10 years or more such that the continued use would not require planning permission and is immune to enforcement action.</p> <p>The applicant is required to demonstrate that on balance of probability the use has subsisted continuously for a period of 10 or more years.</p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>• A witness statement from the owner and applicant Mr Faisi dated 23/08/2013 confirming that the premises have been used as a sandwich bar/café for over 10 years and was in that use when Mr Faisi acquired the premises over 10 years ago;</li> <li>• Witness statement of Mr Savvas Tsotsos dated 23/08/2013; bar manager at 11 Little Turnstile for the last 15 years. The statement confirms that 10 Little Turnstile has traded as a sandwich bar/café for over 10 years;</li> <li>• Witness statement of Mr Ross Evans dated 23/08/2013, the owner and manager of</li> </ul>		

The Ship Tavern located at 12 Gate Street. The statement confirms that the premises at 10 Little Turnstile have existed as a sandwich bar/ café for more than 10 years; and

- Witness statement of Mr Nangialay Khan, dated 23/08/2013, owner of the grocers located at 9 Little Turnstile. The statement confirms that 10 Little Turnstile has traded as a café for over 10 years. In addition the application has provided business rates bills and a driver's licence of Mr Nangialay Khan.

The applicant has also submitted the following plans:

- A site location plan outlining the application site; and
- Current floor plans.

### **Council's Evidence:**

- There is the following relevant planning history:

9000474-Change of use from retail (A1) to any use falling within Use Class A2 of the Town and Country Planning (Use Classes) Order 1987. Refused 23/11/1990. *Reason for refusal: The proposal would result in the loss of a retail shop contrary to the Council's policy to retain such use as expressed in the Borough Plan.*

- There is the following enforcement record:

EN13/0476-Change of use from A1 to A5/A3.

An enforcement case was opened on the 7<sup>th</sup> May 2013 due to the potential unlawful change of use from A1 to A5/A3 use. This record is still open however after inspection it was considered that a greater proportion of business is taken up by deli/ sandwich bar use than food consumed on the premises . The enforcement records state that the menu consists of sandwiches/salads/jacket potatoes/panini's/pastas. It has been confirmed by the owner that these items are either prepared on the premises or off site and heated up. This degree of food preparation would fall into A1 use; therefore no enforcement action has been taken.

- The Valuation office Agency lists 10 Little Turnstile in the 2010 listing as Café and premises with the following valuation in 2010:

Basement: Food Prep  
Ground Floor: Retail  
First Floor: Retail  
Second Floor: Office  
Third: Office

A site visit to the property was undertaken on the 1<sup>st</sup> November 2013. The site visit confirmed that there was a sandwich bar/deli counter on the ground floor with a few seats in a breakfast bar arrangement. Behind the counter there was a microwave, grill for sandwiches and a coffee machine. In the basement was a small kitchen with a dishwasher, Set of 4 hobs and a sink. To the first and second floor there was seating for approximately 25 people and a toilet for the use of customers. Extraction from the ground floor was visible on the first floor level in the internal courtyard. The applicant confirmed that much of the preparation is carried out on the appliance behind the retail counter, including microwaves, a coffee machine and a plate

for toasting sandwiches.

### **Assessment**

The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the “balance of probability”, and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided the applicant’s evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

Evidence provided by the applicant includes only statutory declarations. This evidence, however, does not sufficiently demonstrate the nature in which the premises have operated for since the 28/08/2001. It has not been established that primary cooking occurred on the premises or what proportion of the customers consumed hot food on the premises. No previous or current menus have been provided or evidence of sales over the last 10 years. It has not been established that it did not operate as a sandwich bar / coffee shop within the A1 Use Class only. On this basis, there is insufficient information to demonstrate, on the balance of probability, that the premises has been used continuously for a period of 10 or more years in mixed A1 (sandwich bar) and A3 (restaurant) (A1) use.

Circular 03/2005 states that a sandwich bar does not necessarily cease to be in the shops (A1) class merely because, for example, it also sells a limited amount of hot drinks, hot soup or food that is heated up. Similarly, it is possible for a few sandwich bar customers to eat on the premises, including at tables within or outside their establishments (e.g. on the forecourt) without involving a material change of use.

Taking this circular into consideration, the evidence submitted does not demonstrate, on the balance of probability, that the 10 Little Turnstile either been in mixed use (Sui Generis) including restaurant (Class A3) and Sandwich Bar (A1) nor that such a use has subsided for 10 years or longer.

**Recommendation: Refuse**