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Regeneration and Planning  
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23 November 2012

**Re: Application for a Certificate of Lawfulness – Existing Use of Ground Floor  
as A1 retail unit with ancillary diagnostic centre.  
63 Chetwynd Road, London NW5 1BX**

### **Background**

The application premises 63 Chetwynd Road was formerly used as an off licence A1 retail use. The off licence closed approximately a year ago and was left vacant for a number of months before it was taken over by the current owner on 26 June 2012 and refurbished for retail and as a personal training and diagnostic centre.

Following receipt of a letter from the Council's Appeals and Enforcement section advising that the use of the premises was unauthorised a planning application was submitted for a change of use of the ground floor of the premises from A1 retail to D1 personal training facility.

The application was assigned the reference 2012/3264/P but following advice from the planning officer that the application would be refused it was subsequently withdrawn by email on 01 October 2012.

Following withdrawal of the application advice was sought from both enforcement and planning officers regarding the best approach to address the issues raised.

Having discussed the requirements of the leaseholder it is evident that main use will be for retail sales of training equipment, clothes and energy foods with ancillary space as a Biomechanical Assessment Centre (diagnostic centre) in which clients are analysed to determine their main physical characteristics in terms of posture and movement.

This computerised diagnosis would inform the personal trainer of the type of products required to enhance training performance. The products would then be sold to the clients undertaking diagnosis.

The bulk of sales would be to members of the public and customers drawn from the local area and other local gymnasiums.

The occupier manages and trains people at various venues including the Highgate Road Chapel and at LA Fitness Centre. Some of these clients are referred for diagnostic assessment at Chetwynd Road where product sales take place. Some of the items sold arise out of the diagnostic recommendations made following diagnostics.

With regard to use, the number of clients visiting the diagnostic centre each week is between 24-35 people each week mainly drawn from local area.

## **Definition of ancillary**

The test for characterising whether a use is ancillary was in *Lizzo v Ryde Municipal Council* where the High Court approved the statement of Glass JA in *Foodbarn PTY v Solicitor-General* that:

**“where a part of land is used for the purpose which is subordinate to the purpose for which another part is used, the whole of the land is regarded as being used for the dominant purpose. The subordinate purpose is merely incidental or ancillary to the dominant purpose.”**

In this case the part of the ground floor used as a diagnostic centre is the rear section of the building shaded in the plan. This area comprises less than 25% of the whole ground floor area with the dominant space being given over to the dominant retail use.

It is submitted further that the diagnostic centre does not constitute a separate or independent use as it is dependent on the main retail use as clients undergoing evaluation are sold products from the retail unit to assist them in correcting or improving aspects of their physical performance. Relevant products may include technical equipment, training shoes, protein powders or and other relevant products.

## **Conclusion**

The use of the ground floor of the premises as a retail unit with ancillary diagnostic centre is considered to be lawful and therefore the local planning authority are requested to confirm the existing use and to grant a certificate of lawfulness for the use.

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