

LDC Report		18/01/2012	
Officer		Application Number	
Philip Niesing		2011/5567/P	
Application Address		Recommendation	
108 Swains Lane London N6 6PH		Please see draft decision notice	
1st Signature		2nd Signature (if refusal)	
Proposal			
Use as osteopathic clinic with rehabilitation/personal training gym and ancillary services (Class D1) at part ground floor level			
Assessment			
<p>The application site is located on the western side of Swains Lane near the junction with South Grove, Highgate Village. This application relates solely to part of the ground floor of no.108, which is to the rear of 12 South Grove.</p> <p>The building is not listed and is located in the Highgate Village Conservation Area.</p> <p>The application seeks to demonstrate that the premise has been used as an osteopathic clinic with a rehabilitation/personal training gym and ancillary services (Use Class D1) for a continuous period exceeding 10 years. The applicant is required to demonstrate, on balance of probability that the existing D1 use has existed for such a period so that the continued use would not require planning permission.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • 5 no. statutory declarations from patients stating that they have received osteopathic treatment at this premises since 1999, and a statutory declaration from the owner stating that he has operated from this premises since May 1999. He also declared that the subject clinic has provided a rehabilitation/personal training gym and other health related services including massages, nutritional advice and detox treatment since that time. • A copy of magazine/newspaper articles referring to the 'Highgate Village Osteopathic Clinic' and 'The London Frozen Shoulder Clinic' located at 108 Swans Lane. The articles date back to November 2000, November 2002 and February 2003. • Advertisement Invoices dated July 2003 and June 2004; • Copy of Professional Insurance letter and Certificate addressed to the application that was sent to this premises dated May 2004. 			

- Invoices dated November 2005, 2006 and 2008 to Highgate Osteo Clinic and Back into shape Osteopath at the subject address.
- Current web site www.backintoshape.co.uk

The applicant has also submitted the following plans:

- A site location plan outlining the application site; and
- A floor plan showing the treatment rooms, reception area and gym

Council's Evidence

The most recent planning history relating to number 108, the subject of this application, dates back to 1984, when permission was granted to use a original 'depot' (B8 use class) as a light industry (B1 (b) use class). There is no other relevant planning history or enforcement action on the subject site.

A site visit to the property was undertaken on 6 January 2012 and the officer was satisfied that the unit had been occupied as a clinic for some time.

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.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' this part of the ground floor unit has existed in D1 non-residential intuitional use for a period of more than 10 years as required under the Act.

Recommendation: Grant Certificate of Lawfulness (Existing)

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