

<b>LDC (Proposed) Report</b>		<b>Application number</b>	2011/5395/P
<b>Officer</b>		<b>Expiry date</b>	
Fergus Freaney		21/12/2011	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
132-140 Hampstead Road London NW1 2PS			
<b>Conservation Area</b>		<b>Article 4</b>	
<b>Proposal</b>			
Use of the ground to fifth floors as B1(b) Use Class following the lawful implementation of approved scheme 2010/4683/P (Granted 04/02/2011).			
<b>Recommendation:</b>		Issue Certificate of Lawful Development	

**Proposal:**

A certificate of lawful development is sought to ascertain whether, following lawful implementation of a scheme approved under planning reference 2010/ 4683/P (granted 04/02/2011), the proposed use of the ground to fifth floors as B1(b) use would be a permitted change away from use class B1(a) as described in the approval.

**Assessment:**

The previous permission (2010/4683/P) was granted with the following description:

*Change of use of existing building at 132-140 Hampstead Road, together with partial demolition of upper parts and addition of roof top extensions and associated internal and external works, from an existing mixed use of warehouse and offices (Use Classes B8 and B1a) to a mixed use of offices (B1a) and flexible storage/light industrial use (B8/B1c): Demolition of existing petrol filling station at 142 Hampstead Road (Sui Generis use) and construction of a new 12-storey building (Class C3) containing 30 private (9 x 1 bed; 18 x 2 bed; 3 x 3 bed) and 8 affordable (1 x 1 bed; 3 x 2 bed; 3 x 3 bed social rented, and 1 x 2 bed intermediate) residential flats plus a retail unit (Class A1) at ground floor level: Works of hard and soft landscaping, alterations to the service road and other works incidental to the application.*

This permission referred to the use of the basement as mixed use B1a and storage/light industrial use (B8/B1c), and the Ground up to Fifth floors as B1a office space.

There are no planning conditions attached to the approval, or clauses in the legal agreement which would restrict the ground to fifth floors to the B1(a) Use Class described above, subject to the legislation laid out in the Town and Country Planning (Use Classes) Order 1987 (as amended).

B1(a) Use Class is defined as being general office space, whilst B1(b) is defined as research and development of products and services, both of which being a use which can be carried out

in any residential area without detriment to the amenity of that area by reason of noise, smell, fumes, smoke, soot, ash, dust or grit.

The Town and Country Planning (Use Classes) Order 1987 (as amended) states that 'where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land'.

This is supported by Circular 03/2005 (Changes of use of Buildings and Land) which states that 'B1 remains a business class which groups together many offices and light industrial uses which are broadly similar in their environmental impact and puts them into a single class...the amended order maintains the approach of considering whether a use is capable of being carried out within a residential area. All aspects of the use are considered against the criteria: noise, vibrations, smell, fumes, smoke, soot, ash, dust or grit. In this context, there will normally be no material change of use requiring planning permission until an intensification or change in the nature of the use is such that it would no longer satisfy the limitation specified in the class'.

The permission granted under reference 2010/4683/P does not preclude the Ground to fifth floors to be used as B1(b) use as no conditions limiting the use have been attached to the permission, and there are no clauses in the legal agreement to that effect. The applicant is not proposing any change to the approved use at basement level as mixed use Light Industry (B1c) and Storage (B8) at basement level.

Provided the proposed B1(b) Use Class would not result in there being a detrimental impact on the amenity of the surrounding area with regards to the criteria outlined above, it would not constitute development following the lawful implementation of approved scheme 2010/4683/P and would therefore not require planning permission or a revision to the approved scheme.

**Recommendation: Issue Certificate of Lawful Development**

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