

Delegated Report		Analysis sheet		Expiry Date:		27/08/2007	
		N/A / attached		Consultation Expiry Date:		N/A	
Officer				Application Number(s)			
Elaine Quigley				2007/3220/P			
Application Address				Drawing Numbers			
63 Neal Street London WC2H 9PJ							
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature				
Proposal(s)							
Certificate of Lawfulness for existing use as a restaurant and takeaway.							
Recommendation(s):		To refuse certificate of lawfulness for existing use					
Application Type:		Certificate of Lawfulness (Existing)					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:	No. notified	00	No. of responses	00	No. of objections	00	
			No. electronic	00			
Summary of consultation responses:		None requested					
CAAC/Local groups* comments: *Please Specify		None required					

Site Description

The site is located on the west of Neal Street in close proximity to the junction with Shaftesbury Avenue. The application site relates to the basement and ground floor of the building. The site falls within the Seven Dials (Covent Garden) Conservation Area.

Relevant History

3962

Planning permission was granted on 07/09/1967 for the use of the ground floor premises for a ladies hairdressing Salon.

4222

Planning permission was granted on 01/11/1967 for the change of use for a limited period of the ground floor from surgery to hairdressing salon. A condition was attached limiting the use until 31/10/1974.

5265

Planning permission was granted on 05/06/1968 for the change of use on ground floor from surgery to Class I.

PL/8703638

Planning permission was granted on 20/04/1988 for the installation of a new shopfront, retention of a retractable canopy and the erection of a single storey rear extension for retail use.

PS9904622/R1

Planning permission was refused on 16/07/1999 for the installation of a new fully opening shopfront. The shopfront by reason of its' inappropriate appearance, materials and design was considered detrimental to the appearance of the building and the conservation area.

2000

The applicant was granted consent on 07/06/2000 under the provisions of the Highways Act 1980 to place 3 tables and 10 chairs on the highway between the hours of 8:00am and 8:00pm Monday to Saturday and 9:00am to 7:00pm Sunday

2001

The applicant was granted consent on 11/09/2001 under the provisions of the Highways Act 1980 to place 3 tables and 10 chairs on the highway between the hours of 9:00am and 9:00pm Monday to Saturday and 9:00am to 8:00pm Sunday.

2003

The applicant was granted consent on 07/01/2003 under the provisions of the Highways Act 1980 to place 5 tables and 10 chairs on the highway between the hours of 8:00am and 8:00pm Monday to Saturday, 9:00am and 08:00pm Sunday.

Relevant policies

Not relevant

Assessment

This application is for a Certificate of Lawfulness for use of the ground floor and basement of the property as a restaurant/café (Class A3).

Evidence provided

To support the application, the following evidence has been submitted:

- Statutory declaration dated 28/06/2007 from the owner that the property has been leased since October 1992 and has been occupied and run continuously as a brassiere supplying both hot and cold food to eat in or take away
- Letter from Ronal Elliott & Co Chartered Accountants dated 20/06/2007 confirming that they have acted on behalf of the applicant since 1993 and the premises has been operating as a café/patisserie, producing hot food and beverages for consumption both on and off the premises since that time.
- A copy of the signed lease from Structadene Limited (landlord) to Jewelwheel Limited (tenant) dated 03/07/1986
- A photograph showing the external and internal areas of the café including the counter area on the ground floor.
- A copy of the licensing certificate from East Central Licensing Area to the applicant for a restaurant licence dated 04/03/2002.
- A copy of the licensing certificate from Camden and Islington Licensing Petty Sessions Area to the applicant for a restaurant licence dated from 10/05/2004 to 04/04/2007.
- A copy of a letter from Camden Consumer Protection Service dated 17/11/2005 relating to the application site confirming receipt of the application for the conversion of the existing restaurant licence to a new premises licence/club premises certificate
- A copy of a letter from Camden Consumer Protection dated 11/01/2006 to confirm permission granted for premises licence valid from 24/11/2005 until it is revoked or surrendered.
- A copy of the premises licence certificate from the London Borough of Camden Licensing Authority
- Copy of basement and ground floor plan showing the kitchen area and toilets in the basement with dining area and staff and counter area on the ground floor.
- Copy of Land Registry Title Deed stating the applicant as one of the leaseholders from 25/12/2003 to 24/12/2023.
- A copy of a letter from the H M Inspector of taxes stating that the property has been operating as a patisserie from 04/12/1992.
- A copy of a signed lease from Structadene Limited (landlord) to the applicant as tenant relating to the ground floor and basement of the property dated 23/02/2005 for a contractual period from 25/12/2003 ending 24/12/2023.

Assessment

In order to grant a Certificate of Lawfulness it is necessary to demonstrate that on the balance of probability, the property has been in continuous use as a restaurant/café (Class A3) since July 1997.

The 1986 lease provides no relevant information. The information in the 2005 lease indicates that the use property can fall within either Class A1 or Class A3 depending on the nature of the use. The statutory declarations and letter from the applicant's accountant and H M Inspector of Taxes indicates that the property has been operating as a restaurant/patisserie serving hot and cold food to eat in or takeaway for a period of over ten years. Therefore the length of time that the property has been operating as a restaurant has been demonstrated.

The statutory declaration refers to the restaurant use (A3) and also states that a hot and cold food takeaway service is provided. This falls within A5 use under the Use Classes Order 2005. The information does not clearly define the extent of each of the uses in terms of percentage of sales. Consequently it is not possible to ascertain if the takeaway element of the business would be considered ancillary to the restaurant use or forms a sui generis use (A3/A5 use).

Inadequate information or evidence of the nature and scale of business operations at the premises over the past 10 years has been submitted. In order to satisfactorily demonstrate that the property has been in continuous use as a restaurant/café since 1997 the applicant would need to provide further information relating to the percentage of sales of food at the premises and as part of the takeaway service.

Whilst the site visit appears to show that the counter takeaway service is restricted to cold baked food, coffees and food that is heated by microwave that could be classified as A1 use, it is not clearly evident from the information submitted that kitchen prepared food is not being sold as part of the takeaway service.

It is not possible to determine that, on the balance of probability, the property has been in Class A3 use only for a continuous period of 10 years.

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