

LDC Report	14/10/2014
Officer	Application Number
Sam Watts	2014/5188/P
Application Address	Recommendation
Mamma Mia 296 Kentish Town Road London NW5 2TG	Refuse certificate of lawfulness.
1st Signature	2nd Signature (if refusal)
Proposal	
Use of premises as cafe/restaurant (Class A3).	
Assessment	
<p>The application site is located on the east side of Kentish Town Road. The ground and basement floor use are currently considered to be in A1 use but is operating as a café (A3 use) and the floors above have a residential use. The site is located in the Kentish Town Conservation Area and is noted as a positive contributor in the Kentish Town Conservation Area Appraisal and Management Strategy.</p> <p>The application seeks to demonstrate that the premises have been operating as a café (class A3) for a period of 10 years or more such that the continued use would not require planning permission. The applicant is required to demonstrate, on balance of probability that the class A3 use has been operating continuously for a period of 10 or more years.</p>	
Applicant's Evidence	
<p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • 1 x bank balance letter for the period 09/01/2004 – 09/02/2004. • 1 x cheque from The Moorcroft Group to Mamma Mia restaurant dated 23/06/2006. • 1 x cheque dated 17/02/05. • 1 x walking possession agreement letter dated 19/03/2008. • 1 x seizure of goods notification dated 19/03/2008. • 1 x overdue fee require letter dated 22/05/2005 • 3 x bailiff letters dated 26/03/2008, 05/08/2008 and 10/07/2008. • 1 x council tax letter for financial year 2009/2009 dated 17/03/2009. • 1 x letter from British gas dated 12/07/2004 • 1 x letter from BT dated 29/07/2004. • 1 x letter from BT dated 11/07/2004. 	

- 2 x Mamma Mia menus.
- Business rates payment book 2009/2010
- 3 x affidavits dated 11/08/2014, 13/08/2014 and 13/08/2014

The applicant has also submitted the following plans:

- A site location plan outlining the application site

Council's Evidence

Planning History on site:

Planning application 2003/2053/P for change of use from shop (Class A1 use) to take-away and restaurant (Class A3) and installation of extract flue system was refused in October 2003 for the following reasons:

1. *The proposed development would result in an excessive clustering of Class A3 uses and have a cumulatively harmful effect on the living conditions of neighbouring residents and the amenities of the area generally contrary to Policies SH18 (Food and Drink -A3 Uses), EN1 (General Environmental Protection and Improvement) and RE2 (Residential Amenity and Environment) of the London Borough of Camden Unitary Development Plan (2000).*
2. *The loss of a retail unit and the cumulative effects of a further food and drink establishment added to this parade of shops would have a detrimental impact on the attractiveness of this part of the Kentish Town District Centre and undermine the retail character, function, quality, vitality and viability of the Centre contrary to SH1 (Consolidation and improvement of centres), SH2 (Shopping environment and facilities), SH6 (District Centres), SH8 (Secondary Shopping Frontages in Major and District Centres) and SH18 (Food and Drink) of the London Borough of Camden Unitary Development Plan (2000).*

A subsequent appeal was dismissed in October 2004 due to impact on the character and function of the Kentish Town District Centre.

A certificate of lawfulness application 2005/1544/P for use as a cold food takeaway (Class A1) was granted in June 2005.

The officers report noted the following:

The cooking equipment and extraction flue have now been removed from the premises. A counter at the front of the premises, together with display cabinet, provides for the sale of mainly cold foods. The provision of some toasted sandwiches can be considered as incidental, particularly given that no primary cooking is involved. A seating area of 5 small tables for a maximum of 18 persons towards the rear of the premises comprises no more than 25% of the total floorspace. This amount of seating is just within the limits which can reasonably be considered as ancillary to the main activity at the premises which involves the sale of cold food.

It is therefore considered that the existing use of the premises is for the purposes of a cold food takeaway, or sandwich bar which falls within the A1 Use Class.

Planning application 2006/0611/P was refused on 16.8.07 for the retention of use as a cafe (Class A3) at ground floor level with the associated installation of an extraction flue to rear and access ramp to front. Refused for the following reasons:

- 1. The use of the premises as a cafe has resulted in the loss of a retail unit and an over-concentration of food and drink units in the immediate locality, to the detriment of the character, function, vitality and viability of the Kentish Town Centre, contrary to policies R3 and R7 of the London Borough of Camden Replacement Unitary Development Plan 2006.*
- 2. The proposed ventilation flue would be a visually intrusive feature in the skyline to the detriment of the streetscene and the character and appearance of the Kentish Town Conservation Area contrary to policies B1, B3 and B7 of the London Borough of Camden Unitary Development Plan 2006.*
- 3. The proposed access ramp and handrail to the front entrance would be a visually intrusive and incongruous feature which would detract from the streetscene and the character and appearance of the Kentish Town Conservation Area contrary to policies B1, B3, B4a and B7 of the London Borough of Camden Unitary Development Plan 2006.*
- 4. The proposed access ramp to the front entrance, by reason of its steep gradient, would provide unsuitable access arrangements contrary to policies SD1c and B1 of the London Borough of Camden Unitary Development Plan 2006.*

Two informatives were added to the decision which advised the applicant to 1. return the use of the premises to Class A1 and to remove the flue to avoid enforcement action being taken, and 2. to demonstrate that access arrangements are contained within the private forecourt and allow sufficient circulation space and would not impede pedestrian movements.

2007/6417/P - Retention of use as a cafe (Class A3) at ground floor level with the associated installation of an extraction flue to rear and raising of forecourt to create level access to the premises and associated installation of new entrance door. Refused for following reasons:

1. The use of the premises as a cafe has resulted in the loss of a retail unit and an over-concentration of food and drink units in the immediate locality, to the detriment of the character, function, vitality and viability of the Kentish Town Centre, contrary to policies R3 and R7 of the London Borough of Camden Replacement Unitary Development Plan 2006.
2. The ventilation flue, as installed, is considered to be a visually intrusive feature in the skyline and is detrimental to the streetscene and the character and appearance of the Kentish Town Conservation Area contrary to policies B1, B3 and B7 of the London Borough of Camden Unitary Development Plan 2006.
3. The proposed raising of the forecourt outside the premises would result in creating a significant level change in between the forecourt and the public highway which would in creating unsuitable access either side of the forecourt and in front of it. This would be contrary to policies SD1, B1 and T12 of the London Borough of Camden Replacement Unitary Development Plan 2006.

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.

An enforcement investigation was also open under reference number EN04/0112 for the unauthorised change of use from A1 to A3. The assessment stated “On site Monday 12 May 2008 it was noted that the cooking facilities had been removed from the premises except for the limited amount of reheating equipment mentioned in the Certificate of Lawfulness granted in June 2005, menu and setup for cold food takeaway. The ventilation flue had also been removed. Premises were operating as an A1 use”.

According to the Council’s internal system, the use class of the building has been A1 every year since 2005, except 2013 which was A3. There is also evidence that business rates for these premises were paid for an A1 use in both 2005 and 2010.

A site visit to the property was undertaken on the 18/09/2014. The premises were undergoing refurbishment on the ground floor and there was a basement with a bar, tables and mini-rooms downstairs.

Given the planning, enforcement and business rates history on the site above, the Council has substantial evidence to contradict the applicants’ version of events.

None of the evidence provided by the applicant demonstrates that the premises has had an A3 use for at least 10 years. Nothing has been provided for 2007, 2011, 2012, 2013 or 2014. Whereas a number of the documents submitted are addressed to “Mamma Mia Café and Restaurant”, there is not enough evidence provided to demonstrate the A3 use has never been discontinued at some point in the last ten years.

It is therefore considered that the information provided by the applicant is not sufficiently precise or unambiguous to demonstrate that ‘on the balance of probability’ that A3 use has existed for a period of more than 10 years as required under the Act. Furthermore, the Council’s evidence and the business rates evidence contradict and undermine the applicant’s version of events.

Recommendation: Refuse with warning of enforcement notice

Recommendation:

That the Head of Legal Services be instructed to issue an Enforcement Notice, under Section 172 of the Town & Country Planning Act 1990 as amended, requiring the use as restaurant (Class A3) to cease and to pursue any legal action necessary to secure compliance and officers be authorised, in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

THE BREACH OF PLANNING CONTROL ALLEGED

Without Planning Permission, the change of use from an A1 (retail sandwich bar) to A3 (café/restaurant).

REASONS FOR ISSUING THIS NOTICE:

- a) It appears to the Council that the above breach of planning control has occurred within the last 10 years.
- b) The unauthorised change of use by virtue of the loss of the retail space (Class A1) in this location is detrimental to the retail character and function of this part of the London Frontage. It is therefore contrary to Core Strategy policy CS7 (Promoting Camden's centres and shops) and development plan policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) of the Local Development Framework 2010.

The Council do not consider that planning permission should be given because planning conditions could not overcome these problems.

WHAT YOU ARE REQUIRED TO DO

The use as a café/restaurant (A3) shall cease and all fixtures, fittings and equipment associated with the restaurant use shall be permanently removed.

Compliance due date: within 3 months of this notice taking effect.