

LDC Report	08/09/2014
Officer	Application Number
Katrine Dean	2014/4403/P
Application Address	Recommendation
Tupelo Honey Cafe, 27 Parkway, London, NW1 7PN	Refuse
1st Signature	2nd Signature (if refusal)
Proposal	
Use of premises as cafe (Class A3)	
Assessment	
<p>The application site is located at 27 Parkway.</p> <p>The application relates to a ground floor corner unit which is currently being used as an A2 estate agent.</p> <p>The building is not listed and is located in the Camden Town Conservation Area.</p> <p>The application seeks to demonstrate that the premises have been used as an A3 café; that this use has existed for a period of 10 years or more, such and that the continued use (as A3) would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that an A3 cafe use of the unit has existed for a period of 10 or more years.</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"> • A lease agreement dated 02/081990, which restricts the property to an A3 use, in clause 4.20. • Insurance documentation, which was issued on 15/12/1999, referring to the property as a licenced café. • A premises license declaration, which was granted on 07/09/2005. • A signed statutory declaration from the owner of the building stating that the unit has been used as a hot food restaurant from 02/08/1990 until 31/01/2014 without interruption, in accordance with the lease agreement. <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> • A site location plan outlining the application site, a site plan and a ground floor layout plan. 	

Council's Evidence

A site visit to the property was undertaken on 02/09/2014, when the property was under refurbishment. A second visit, followed by a site meeting with the applicant's agents took place on 28/10/2014, when the premises were operating as an A2 estate agent.

There is no relevant planning history or enforcement action on the subject site.

No Council tax liability has been confirmed for the premises; however the applicant has advised that Council Tax has been paid for an A1 use, rather than A3.

Camden Council's retail survey refers to the unit as:

A2 and A3 in 2004; A3 in 2005; A1 café from 2006 to 2012; and A3 café in 2014.

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.

Although the evidence submitted by the applicant includes a signed statutory declaration and the tenancy only allows an A3 use, it is considered that this evidence is conclusive or sufficient to prove that an A3 use has been continuous and uninterrupted for a period of 10 years to the date of the application. Council Tax rates have been paid for a retail property and the retail survey classifies it as Class A1, rather than A3 between 2006 and 2012.

Although Tupelo Honey business name is mentioned in the retail survey, it is unclear whether indeed the unit was used as A3 or A1. After the granting of the premises licence in 2005 it would have made sense for the unit to have been operating as a licenced A3 café or even an A4 bar, however, this is just short of the 10 years which is required for the A3 use to be lawful.

Furthermore, the latest site visit of the premises revealed the property is operating as A2 estate agent. If sufficient evidence had been provided the change of use to A2 would have been acceptable under permitted development (from A3 to A2).

In conclusion and in light of the circumstances referred to above, the applicant's evidence is not considered to be conclusive enough to prove that the unit has been used solely as an A3 café continually and for the duration of the past 10 years. As such, in order to regularise the current use of the unit, a retrospective planning application is required to be submitted for the change to the current operation as estate agent.

Recommendation: Refuse