

LDC Report Members Briefing	Expiry Date 07/07/2015
Officer Nanayaa Ampoma	Application Number 2015/2546/P
Application Address 113 Regent's Park Road London NW1 8UR	Recommendation Grant Certificate of Lawfulness
1st Signature	2nd Signature (if refusal)
Proposal Use of ground floor as offices (Class B1).	
Assessment 1. Background 1.1. The application site is occupied by a detached two storey Victorian warehouse style building, with a mansard roof extension. The area around the building is of mixed use character with residential and commercial uses in close proximity. 1.2. The application site falls within the Primrose Hill Conservation Area. The building is not listed. 1.3. The application is made under S191 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness for the existing use of the building as B1 (office). In order to qualify, the applicant seeks to demonstrate that the property has been used continuously for a period of more than 10 years for the uses set out above prior to the application. 2. Consultation Responses 2.1. An objection has been received from the local Primrose Hill Conservation Area Advisory Committee (CAAC). All of the objections have highlighted the fact that in June 1994 the applicant applied for a Certificate of Lawfulness for retail (planning ref: 9400518) and this was granted by the Council. In addition, that in winter 2014 the applicant conducted a "bin sale" that allowed members of the public to visit the premises and buy wine. In light of this history local residents believe that the lawful use of the property is as A1 (shop). 2.2. Officer Response: Please see section 5 below. 3. Applicant's Evidence The Applicant submitted the following documentation as evidence to support their claim:	

- Site Plan (01)-S-002 Rev B
- Existing Ground floor plan (01)-P-0G0
- Appendix 01- Site plan
- Appendix 02- Letters from former customers
- Appendix 03- Asset Purchase Agreement
- Appendix 04- Licensing application
- Appendix 06- 1994 Certificate of Lawfulness
- Appendix 07- 2001 Decision Notice
- Appendix 08- 2001 Plans
- Appendix 09- 2003 Decision Notice
- Appendix 10- 2003 Officer Report
- Appendix 11- 2005 Decision Notice
- Appendix 12- Affidavit Bibendum Michael Saunders
- Appendix 13- Affidavits Royal Bank of Scotland Michael Hubbert
- Appendix 14- Affidavit The Wondering Company Simon Swift
- Appendix 15- 2004 plans
- Appendix 16- VOA Business Rates
- Appendix 17- 2007 valuation
- Appendix 18- 2010 valuation
- Appendix 19- 2013 valuation
- Appendix 20- Website Page

4. Council's Evidence

4.1. The Council's Council Tax records indicate that a property valuation made on 1st April 2005 showed that the ground floor was used as a warehouse. However on 1st September 2005 it was changed to office and premises. This application was submitted on 6th May, 2015. As such this is not conclusive evidence either way that the use has continued as an office for at least 10 years.

4.2. In assessing planning application 2003/1593/P for alterations and additions to the building, the assessing Planning Officer noted that in their formal report "*The building is the former Chalk Farm Garage, but has been converted to an office building for a wine merchant*". This suggests that the officer was of the opinion that the property was offices and not retail at the time of assessment. This application was determined 14/10/2003, more than 10 years prior to the submission of this application.

5. Assessment

5.1. 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.

5.2. Comments from local CAAC point to the 1994 Certificate and the sale of wine from the

premises as evidence that the unit should be classified as an A1 retail use. Letters from residents submitted with the application have confirmed that it was not possible to walk into the unit and purchase wine after 1999, which would be a typical occurrence with an A1 unit. Furthermore, it is not unusual for any particular use to employ a secondary ancillary use. Large office units may also contain small shops or cafes within them as part of their overall usage, which does not override their primary use. As such the sale of wine is considered ancillary to the primary office use. Council's legal team have been consulted and consider that such sales would be classified as ancillary. It should be noted that the current layout of the site is indicative of an office use, not a retail use.

5.3. The information in favour of the ten years use is primarily supported by submitted affidavits, neighbour letters from 1999 complaining of the closure of the shop to members of the public and the description of the building as offices as early as 2003. Affidavits represent legal documents made under oath. The Council's legal team have confirmed that they are satisfied that the affidavits submitted meet the necessary requirements i.e. witnessed by a solicitor (who is a competent person), made by individuals and made in line with Statutory Declarations Act 1835. Together these documents demonstrate that the property has been used as offices consecutively since at least 2003.

5.4. In light of the above, the council is satisfied that on the balance of probabilities, the evidence submitted to show that the ground floor has been used as Class B1(a) offices for a period of over ten years is sufficient. Therefore the application is recommended for approval.

6. Recommendation

Grant Certificate of Lawfulness

DISCLAIMER

Decision route to be decided by nominated members on Monday 13th July 2015. For further information please click [here](#)