

LDC Report	20/11/2015
Officer	Application Number
Barry Dawson	2015/5389/P
Application Address	Recommendation
Unit 305 Highgate Studios 53 - 79 Highgate Road London NW5 1TL	Approve
1st Signature	2nd Signature (if refusal)
Proposal	
Use of the unit as self-contained cafe (Class A3).	
Assessment	
<p>The application site is located on the south west side of Highgate Road, forming part of a large-scale industrial and mixed used site.</p> <p>The building is neither listed, nor is it in a Conservation Area.</p> <p>The application seeks to demonstrate that unit 305 has existed as a café for a period of 10 years or more such that the continued use would not require planning permission.</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"> • Statutory declarations from numerous customers of the café, confirming it to have been in place for ten or more years • Statutory declarations from maintenance workers confirming that equipment to prepare hot food and that hot food had been prepared on site for ten or more years • Planning permission dated 14/09/2000 (application ref PEX0000161) granting mixed use for the site, including A3 • Planning permission dated 19/11/1998 (application ref PE9800396R1) granting mixed use for the site, including A3 • Till receipts from throughout 2001 itemised by meal types • Lease from 14/09/2010 for the use of the premises as a café (including fixtures fittings and mechanical goods details) • Photographs of the site • Business rates bills 	

The applicant has also submitted the following plans:

- A site location plan outlining the application site
- Floor plan of the unit in question
- Floor plan of the whole site

Council's Evidence

Business rates have confirmed that the site was registered as a café up until 01/04/2005. After this date, the unit was split in two – 305a and 305b. 305a retained its use as a café (and was billed as such), while 305b was billed as a 'reception and seating area'. The agent for this application had attempted to obtain business rates bills spanning ten years but was unable to do so.

The council's own database lists the address as 'Café suite 305, Highgate Studios, NW5 1TL.

A site visit to the property was undertaken on 22/10/2015. However, the officer was unable to see the café as it was closed for refurbishment, although a member of staff had confirmed a café was indeed in situ.

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.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the lower ground floor unit has existed in residential use for a period of more than 10 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Recommendation: Approve