

79 Gloucester Avenue, NW1 8LB



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Site photos – 79 Gloucester Avenue (2016/1713/P)



Site at far right corner



Site in context

LDC Report Members Briefing	Expiry Date 19/05/2016
Officer Oluwaseyi Enirayetan	Application Number 2016/1713/P
Application Address 79 Gloucester Avenue London NW1 8LB	Recommendation Grant Certificate of Lawfulness
1st Signature	2nd Signature (if refusal)
Proposal Use of ground and basement floors as office (Class B1a).	
Assessment	
1. Background <p>1.1. The application site comprises an existing 3-storey plus basement end of terrace property situated on the southern side of Gloucester Avenue, at the junction of Edis Street.</p> <p>1.2. The application site falls within the Primrose Hill Conservation Area. The building is not listed</p> <p>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.</p> 2. Consultation Responses <p>2.1. An objection has been received from Primrose Hill Conservation Area Advisory Committee (CAAC). 'While we acknowledge that this was a solicitor's practice for many years, we would argue that, by locating the practice in a former shop, the practice had the benefit of shop premises – openness, accessibility, walk-in inquiries – which would not be true of the normal category of B1a, which might be hidden from open public view, in an office building. We would suggest that openly visible office activity within an original shop is 'sui-generis, and would therefore need planning consent for change of that special use'.</p> <p>2.2. Officer Response: Whilst the argument is valid, the use would have been A2 not 'sui-generis'. However, the planning history record shows that the ground and basement floors should be used as offices, which includes a solicitors office and not a walk-in office</p>	

for public use, evidence provided to demonstrate that it was not a walk in office is a signed affidavit and an email from the agent stating 'The letter from the owner's agent makes it clear that the premises was in use as a solicitor's office. It was not a bank, a building society, bureau de change, estate agents or employment agency. As is the case with any Class B1 office clients would have visited by appointment to meet with their solicitor. However, it was not a walk-in office for the public. A solicitor's office does not fall within the definition of an Class A2 use'. Whilst this could be a valid point, some of the conditions attached to the planning permission ref:H10/12/19/35811 dated 21 April 1983 could be classed as A2 use according to current planning law, but it is difficult, according to the certificate of lawfulness criteria to demonstrate that the current use of the ground floor have been used as A2, however there is sufficient evidence to demonstrate it has been in used as B1.

3. Applicant's Evidence

The Applicant submitted the following documentation as evidence to support their claim:

- Site location plan
- Existing floor plans
- Statutory Declaration prepared by Emyr Pierce Solicitors dated 9 June 2016
- Cover letter prepared by Jonathan Wright of Planning Solutions (London) Ltd
- Supporting document prepared by Bureau Property Consultants dated 24 May 2016, which detailed copy of the last lease dated 13th October 2010, showing a clause that the only allowed use for the premises is offices (Clause 2.20). Furthermore, stating that on the ground floor there was a receptionist, a waiting area, an office occupied by a solicitor and an office by a bookkeeping clerk.
- Copy of planning permission ref:H10/12/19/35811 dated 21 April 1983, describing development 'Use of the ground floor and basement as offices' with additional conditions stating that 'the premises shall be used as offices for solicitors, accountants, architects, estate agents, surveyors valuers, engineers, literary and publishers agents or other similar professional uses and for no other purpose within Class II of the Town & Country Planning (Use Classes) Order 1972'.

4. Council's Evidence

4.1. Planning history shows the following records:

- Change of use of the ground floor and basement from factory and shop use to offices. Refused 05/12/1972
- Change of use of the ground and basement floors from light industrial to office. Allowed on appeal 26/07/1974
- Continued use of the ground floor and basement as offices. Granted 21/11/1978
- Use of ground floor and basement as offices. Granted 21/04/1983

4.2. The Business Rates records indicate that the property has been in use as office/premises since 1995, but has been empty since the 19th of October 2015.

4.3. A site visit to the property was undertaken on the 28/04/2016. Although the premises were vacant, there was evidence of telephone infrastructure such as telephone/fax boxes/cables on the walls. The officer was satisfied that the unit had been occupied for commercial use for some time, although it cannot be confirmed on-site inspection

whether it was in A2 or B1c use.

4.4. Property websites (<http://solicitors.guru/> and <http://local.standard.co.uk/>) indicate the most recent tenant to be Walker Tomaszewsk (W T Solicitors).

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

6 Recommendation: Grant Certificate of Lawfulness

Planning Solutions Ltd
Crabtree House
83 Crabtree Lane
London
SW6 6LR

Application Ref: **2016/1713/P**
Please ask for: **Oluwaseyi Enirayetan**
Telephone: 020 7974 3229

16 June 2016

DRAFT

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Existing) Granted

The Council hereby certifies that on the 05 April 2016 the use described in the First Schedule below in respect of the land specified in the Second Schedule below, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Use of ground and basement floors as office (Class B1a).

Drawing Nos: Site location plan; Floor plan; Cover letter prepared by Jonathan Wright of Planning Solutions (London) LTD; Copy of planning permission ref:H10/12/19/35811 dated 21 April 1983; Supporting document prepared by Bureau Property Consultants dated 24 May 2016; Statutory Declaration Prepared by Emyr Pierce Solicitors dated 9 June 2016.

Second Schedule:

79 Gloucester Avenue
London
NW1 8LB

Reason for the Decision:

- 1 The use began more than ten years before the date of this application.

Informative(s):

Director of Supporting Communities



1

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Director of Supporting Communities

Notes

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful on the specified date and thus, was not*/would not have been* liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use*/operations*/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.