

<b>LDC (Proposed) Delegated Report</b>		<b>Analysis sheet</b>		<b>Expiry Date:</b>		19/08/2016	
		N/A / attached		<b>Consultation Expiry Date:</b>		N/A	
<b>Officer</b>				<b>Application Number(s)</b>			
John Diver				2016/3561/P			
<b>Application Address</b>				<b>Drawing Numbers</b>			
29-33 Chalk Farm Road London NW1 8AJ				See Draft Decision Notice			
<b>PO 3/4</b>		<b>Area Team Signature</b>		<b>C&amp;UD</b>		<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>							
Proposed use of the premises as food outlet (Use Class A1).							
<b>Recommendation(s):</b>		Granted					
<b>Application Type:</b>		Certificate of Lawfulness (Proposed)					
<b>Conditions or Reasons for Refusal:</b>		Refer to Draft Decision Notice					
<b>Informatives:</b>							
<b>Consultations</b>							
<b>Adjoining Occupiers:</b>		No. notified	00	No. of responses No. electronic	00 00	No. of objections	00
<b>Summary of consultation responses:</b>		Statutory consultation is not required for this type of application. However no responses have been received in relation to the proposed development.					
<b>CAAC/Local groups comments:</b>		No responses have been received in relation to the proposed development.					

## Site Description

The site is a commercial unit at ground and lower ground floor on the corner of Chalk Farm road and Hartland Road. This unit is situated within a 4 storey mixed use development which now extends between 29-33 Chalk Farm Road. The application unit was granted permission for a use as A1 under planning permission 2012/0974/P (see below). The site is within the 'Camden Town' town centre and is defined as being within a core shopping frontage by the Council's CPG5 (Town Centres, Retail & Employment). The site is not located within a conservation area and the application property is not statutory listed. No Article 4 directives have been placed upon the application site.

## Relevant History

Historically there were a number of applications in relation to the site prior to its demolition and redevelopment in 2013/14. These are no longer relevant for future developments. The relevant planning history for the site is as follows:

**Application :** 2016/0648/P

**Date determined:** 18/04/2016

**Address:** 29-33 Chalk Farm Road, London NW1 8AJ

**Description:** Proposed use of the premises as food outlet (Use Class A1).

**Decision:** Refused (unlawful)

- **Reasons for refusal:** (1) *The proposed change of use constitutes 'development' requiring planning permission for the purpose of Section 55 of the Town and Country Planning Act 1990 (as amended) and does not benefit from 'permitted development' under the criteria set out under Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 (as amended).*

**Application :** 2015/6039/P

**Date determined:** 29/02/2016

**Address:** 29-33 Chalk Farm Road, London NW1 8AJ

**Description:** Variation of condition 2 (approved drawings) of planning permission granted on 09/10/2012 (ref: 2012/0974/P) for the redevelopment of petrol filling station site with a basement plus 4-storey mixed-use building, comprising 6 x retail units (Class A1/A3) at basement and ground floor level and 40 student residential units (Sui Generis) above, namely for the relocation of retail unit doors to the Chalk Farm Road and Hartland Road elevations.

**Decision:** Granted subject to s106

**Application:** 2012/6776/P

**Date determined:** 11/02/2013

**Address:** 29-33 Chalk Farm Road, London NW1 8AJ

**Description:** Variation of condition 2 (development to be carried out in accordance with the approved plans) pursuant to planning permission granted on the 09/10/2012 (ref: 2012/0974/P for Redevelopment of existing petrol filling station site with a basement plus 4-storey mixed-use building, comprising 6 x retail units (Class A1/A3) at basement and ground floor level and 40 student residential units (Sui Generis) at mezzanine, first, second and third floor level with cycle storage in the basement) to allow minor material amendments to internal layout, including a change to areas designated to A1 and A3 spaces, and installation of additional fire escape along Hartland Road frontage.

**Decision:** Granted

**Application:** 2012/0974/P

**Date determined:** 09/10/2012

**Address:** Site at Former Esso Petrol Station, 29-33 Chalk Farm Road, London, NW1 8AJ

**Description:** Redevelopment of existing petrol filling station site with a basement plus 4-storey mixed-use building, comprising 6 x retail units (Class A1/A3) at basement and ground floor level and 40 student residential units (Sui Generis) at mezzanine, first, second and third floor level with cycle storage in the basement.

**Decision:** Granted subject to s106

## Relevant policies

The scheme can only be assessed against the relevant planning legislation which is the Town and Country Planning Act 1990, the Town and Country Planning (General Permitted Development)(England) Order 2015 ("GPDO") and the Town and Country Planning (Use Classes) Order 1987.

This lawful development certificate is to determine whether the proposed use represents a material change of use from the existing use. If it were found that the proposed change would not constitute a material change of use, then this change would be 'permitted' and hence could go ahead without the specific grant of planning permission from the local planning authority. An assessment of its planning merits as to its acceptability under current policies is therefore not relevant or possible here, as this is purely a legal determination.

## Assessment

### 1. Proposal

- 1.1. The applicant seeks a certificate of lawfulness for use of the unit as an 'artisan bakery eating establishment' within use class A1. The applicant has described the proposed use as a bakery and eating establishment offering freshly baked goods as well as salads and flat breads which would be assembled to order in a manner which would replicate that of the national sandwich store chain Subway.
- 1.2. The store would offer a range of products for the consumption on or off site including a range of prepared baked and cold goods (i.e. breads and other baked goods, salads, drinks and desserts) as well as offering flat breads heated to order following the customer's choice of toppings. This would include the heating of pre-made dough in a heated press, the customer choosing their desired toppings and then the flat bread being heated in a high speed electric baking oven. The applicant has stated that there would be no primary cooking onsite, with all ingredients being precooked and prepared off-site and delivered to the property.
- 1.3. Four tables would be provided internally however the applicant has stated that the majority of sales would be for consumption off-site. A prospective customer would choose a product from one of the retail displays or place an order at the point of sale area along the rear of the unit. The applicant has confirmed that there would be no table service or waiting staff. The applicant has also contended that due to the specification of the oven and heated press, no external extraction units would be required. The lower ground floor of the unit would be used for an office, customer toilets, walk in storage and freezer as well as a 'prep-kitchen'.

### 2. Appraisal

- 2.1. The Town and Country Planning (Use Classes) Order 1987 as amended [hereafter referred to as the 'Use Classes Order'] describes use classes of various activities. The planning history for this site establishes that the lawful (existing/consented) use of the unit as A1. The applicant proposes the new activity described above as falling within the same use class (A1).
- 2.2. The relevant test is therefore whether the use of the unit proposed to be carried out would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990. The local planning authority must therefore consider whether, on the facts of the case and relevant planning law, the specific use is or would be lawful. Planning merits are not relevant at any stage in this particular application process.

#### Previous application

- 2.3. Lawful Development Certificate 2016/0648/P dated 18/04/2016 found that a similar proposed use of the site was unlawful, requiring planning permission. For this application, very little evidence had been submitted to justify that the proposed use would fall within Use Class A1. The documentation submitted

detailed a business model principally derived from the sale of hot pizzas, with little evidence to suggest that no primary cooking would be required. Furthermore due to a lack of evidence, it was considered that the heating process proposed would require the installation of extract units. As with any Certificate of Lawful Development, the onus for providing sufficient information to support an application is solely upon the applicant and as such the application was determined unlawful on the basis that inadequate evidence had been provided to justify the proposed use as lawful.

- 2.4. Since this determination the applicant has collected considerably more information including a more detailed explanation of their (amended) business model; full details of equipment and preparation methods; as well as a comparison with other similar business models currently operating under the A1 use class.

#### Proposed Business Model

- 2.5. The evidence submitted demonstrates that under the revised model, the business would offer a range of prepared artisan breads, desserts and drinks from retail displays, as well as a choice of salads and flat breads assembled at the customer's preference. Specific details have been submitted of the types of breads, salads and flat breads which this may include. A sample menu has also been submitted indicating an equal number of options for salads as for flat bread.
- 2.6. The submitted plans show that four tables with a total of 16 chairs would be provided at ground floor level. Furthermore the business would include the sale of some hot goods (heated flatbreads). As was acknowledged in the previous application, Circular 03/2005 published by the Office of the Duty Prime Minister in 2005 specifically addresses the issue and states the following in relation to Sandwich Bars;

*“A sandwich bar does not necessarily cease to be in the shops class merely because, for example, it also sells a limited amount of hot drinks, hot soup or food that is heated up. Similarly, it is possible for a few sandwich bar customers to eat on the premises, including at tables within or outside their establishments (e.g. on the forecourt) without involving a material change of use” (para.34)*

- 2.7. Considering the size of the unit, it is not considered that customers sitting at four tables would constitute a significant proportion of business, and that the business would generally rely on 'passing trade'. The majority of the business would therefore remain primarily for the sale of goods for the consumption off site (i.e. not constituting an A3 use). Contrary to the previous application, this evidence has demonstrated that the business could function purely based upon the sale of prepared breads and cold goods. It is therefore reasonable to expect that a considerable amount of the business's custom would be derived from customers walking in from the street, picking up a readymade product, paying and leaving in the same fashion as any business lawfully operating as an A1 use.
- 2.8. Furthermore, although some heated goods would be on offer (an assessment of this heating process and the cooking consideration will follow in paragraph 2.10), it is no longer evident that the sale of hot goods would constitute the majority of sales. On the contrary, the evidence submitted describes a business selling a range of products including baked goods in a similar fashion to a traditional bakery (A1 use) as well as cold goods and freshly prepared salads in a similar fashion to a traditional sandwich bar / deli (A1 use).
- 2.9. Unlike the previous submission, adequate evidence has been submitted to demonstrate that the proposed business model for the unit would, on the balance of probability, not be regarded as an A5 use. This assessment is however subject to further assessment of the heating processes proposed:

#### Heating/Primary Cooking

- 2.10. An issue raised during the assessment of the previous application was that there was a lack of evidence to justify that no primary cooking would take place on site (a prerequisite of an A5 use). As such with this submission, considerable work has been done to outline the process of preparation and heating likely to occur within the unit.
- 2.11. The submitted evidence confirms that no primary cooking would take place on site for the following reasons:

- All ingredients are prepared off site and brought to the unit in sealed containers
- No ingredient would require 'cooking' of any kind
- The only preparation on site would be for salads, which would not require cooking equipment.
- The only heated product available (flatbreads) would be heated in a press in a similar fashion to the way Panini breads are heated in sandwich shops.
- These flat breads could then be further heated if the customer desires once toppings were added in a high speed oven. These could be consumed cold if desired.

2.12. Details and specifications of the ovens / heating press equipment have been submitted and assessed by the Councils Environmental Health officers and it was confirmed that due to their specifications, no extraction plant would be necessary to operate. As these officers were satisfied with the level of information submitted, this point is not further disputed by planning officers. It is also noted that the heating of dough to bake bread is an activity which would occur in main retail/high street units and is included with the traditional A1 use class.

### **3. Conclusion**

3.1. Overall it is considered that adequate evidence has now been submitted to demonstrate that the proposed business model would rely on passing trade for the majority of its business (with seated customers forming an ancillary addition); would provide a range of products for the consumption off site – with freshly heated flatbreads making only part of the overall offer; that no primary cooking would take place on site; and that the heating processed used would not necessitate the installation of dedicated extraction equipment.

3.2. As such it is considered that a test of reasonableness would conclude that the proposed use would remain within the Use Class A1; where the primary function of the business would remain for purposes for the retail sale of goods.

### **4. Recommendation**

4.1. Grant Certificate of Lawfulness.