



Our Ref: 4408/AB/A099622/LPA010916

Development Management  
London Borough of Camden  
Camden Town Hall Extension  
Argyle Street  
London  
WC1H 8EQ

1<sup>st</sup> September 2016

Dear Sir/Madam,

**53 CAMDEN HIGH STREET – APPLICATION FOR CERTIFICATE OF EXISTING LAWFUL USE**

On behalf of my client, Barack Holdings Limited, please find attached an application seeking a Certificate of Existing Lawful Use in respect of the ground floor premises at 53 Camden High Street, London, NW1 7JH.

This application comprises the following documentation:

- Completed application forms.
- This covering letter prepared by WYG.
- 1:1250 scale plan of application site and surroundings with application site outlined in red.
- Statutory declaration of Mr. Mohammaad Abbas.
- Statutory declaration of Mr. Umat Ayub.

Please also find attached a cheque for the sum of £385 payable to the London Borough of Camden for the statutory application fee.

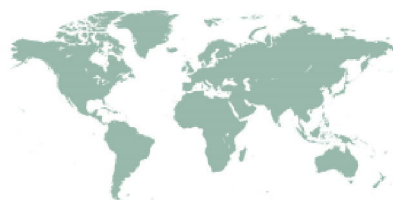
Use for which a Certificate of Existing Lawful Use is sought

A Certificate of Existing Lawful Use is sought in respect of the ongoing use of the premises as a restaurant and hot food take-away, i.e. a sui generis mixed use comprising elements of both A3 and A5 usage under the Use Classes Order (as amended). The A3 element incorporates customers purchasing hot food and drink and then consuming those purchases on the premises, whilst the A5 element incorporates customers purchasing hot food and drink and then consuming those purposes away from the premises.

This mixed usage of the premises has been occurring continuously for over 10 years, including the 10 year period immediately prior to this application being submitted, and no enforcement action has been taken by the Council in respect of this usage during that period.

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#### Description of application site

The application site comprises a ground floor premises on the eastern side of Camden High Street. The premises is, and has been for over 12 years, occupied by a company known as 'Chicken Villa', who sell hot food and drink to customers, both for consumption on the premises (the floorspace of which includes tables and seating for 20 people) and for consumption off the premises.

#### National Planning Guidance relating to Certificate of Lawfulness applications

The advice relating to the determination of Certificate of Lawfulness applications, which was previously contained within Annex 8 of the withdrawn (on 7<sup>th</sup> March 2014) Circular 10/97 (entitled 'Enforcing Planning Control'), can now be found within the National Planning Policy Guidance (NPPG), and that advice largely replicates the advice previously contained within Annex 8 of Circular 10/97.

The NPPG advises that;

*"The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.*

*In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."*

#### Assessment of evidence available

The planning history of the site offers no clarity as to the continuous use of the site over the last ten years,

The only applications relating to the site which have been submitted since 1998 were a retrospective planning application (ref. 2014/4820/P) which was submitted in July 2014 for the retention of an automated teller machine (ATM) (approved September 2014) and an associated advertisement consent application (ref. 2014/5107/A) for an internally illuminated sign surrounding the ATM (also granted consent September 2014). In both cases, the application form describes the existing use of the premises as a "food take-away : commercial" and the Officer's delegated report for both applications describes the use as "ground floor take-away shop (A5)."

An express advertisement consent application (ref. AE9800829) relating to fascia signage, a hanging sign and a canopy in respect of the application premises was approved by the Council in November 1998. Although the application form does not offer any description of the then existing use of the premises, the drawings which formed part of that application show signage advertising Rose and Jack's Cafe, which also supports the contention that at that time the use of the premises fell within Use Class A3 (and noting this was prior to the amending of the Use Classes Order which introduced Use Class A5).

Referring back to the Officer's delegated report on the recent (2014) applications, whilst we do not dispute that the premises both are and have been used as a hot food take-away, there has also always been several tables and seating (20 seats) for customers to sit at and consume their purchases. Evidence of this can be seen on Google Streetview images of the premises, the first of which dates back from May 2012 and the most recent of which is dated November 2015.



Accordingly we contend that the current and historic (i.e. for the 10 years immediately prior to the submission of this Certificate application) usage of the premises does not solely constitute an A5 use, but also incorporates an element of A3 (restaurant) usage, and therefore the lawful use of the premises constitutes mixed A3/A5 usage.

Two statutory declarations have been provided in support of this Certificate application, one from a Mr. Umat Ayub, who has been employed at the application premises from 2005 to the present day, and he has confirmed that the premises has been continuously used as a restaurant and hot food take-away, with customers both purchasing hot food to eat off the premises, and other customers consuming their purchases in the premises, during the entire period of his employment.

This declaration is also collaborated by a separate statutory declaration from a Mr. Mohammad Abbas, who advises that he has been a regular customer of the application site since 2004, and who affirms the same points as those made by Mr. Ayub.

Having regard to national planning guidance as set out in the NPPG, the evidence submitted in support of this Certificate is clear and unambiguous, and demonstrates that the lawful use of the premises constitutes a mixed A3/A5 use, as this use has been occurring continuously at the application premises for the period of 10 years immediately prior to this application being submitted, and without any enforcement action being taken during that period in respect of such usage.

It is not believed that the Council, nor others, have any evidence to contradict or otherwise make the applicant's version of events less than probable, and consequently a Certificate of Existing Lawful Use should be issued on the balance of probability.

#### Conclusion

The Council should issue a Certificate of Existing Lawful Use confirming that the lawful use of the application premises comprises a mixed A3/A5 use, consisting of both a restaurant whereby customers can purchase food and sit down and eat it on the premises, and a hot food take-away where by customers purchase hot food and drink and take it off the premises for consumption.

I look forward to receive an acknowledgement of this Certificate application and payment of the statutory application fee, and to corresponding with the Case Officer to whom this application is allocated.

Should any further information or clarification be required on any aspect of this application, please do not hesitate to contact me.

Yours faithfully,

A black rectangular box redacting the signature of Adam Beamish.

**Adam Beamish MRTPI**

Associate - London

For and on behalf of WYG Environment, Planning & Transport

[Enc.]