

LDC Report	01/12/2016
Officer	Application Number
Tony Young	2016/5204/P
Application Address	Recommendation
11 Kentish Town Road London NW1 8NH	Grant Certificate of Lawfulness (Existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Use as hot food takeaway (Class A5) at ground and basement floor levels.	
Assessment	
<p>The application site is located on the western side of Kentish Town Road, just north of the intersection with Camden Road and Camden High Street. The site sits within a late 19th Century terrace of 3-storey buildings typically with shops and takeaway units at ground floor level. This current application relates to the basement and ground floor levels only at no. 11.</p> <p>The building is not listed but sits within the Camden Town Conservation Area. The site (within the wider terrace) is also recognised as a positive contributor within the conservation area (<i>Camden Town Conservation Area Appraisal and Management Strategy, October 2007</i>).</p> <p>The application seeks to demonstrate that on the balance of probability, the hot food takeaway use began more than 10 years ago such that its' retention 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"> • Lease document between St Charles Property International Ltd and Amarjit Kaur Toor dated 09/04/1998 stating in the Fifth Schedule that the allowed use is <i>restaurant/takeaway or other use within Class A3</i>; • Letter from Barclays Bank PLC to Mr S Mirza (leaseholder) indicating that the premises was in use as a hot food takeaway restaurant (<i>Favourite Chicken & Ribs</i>) on 01/11/2000; • Lease document between St Charles Property International Ltd, Amarjit Kaur Toor and Shahid Baig Mirza signed & dated 04/01/2001, provided in support of the assertion that the ground and basement floors have been used as a hot food takeaway continuously since at least 2001; • Letter from Adler & Co. (solicitors) to St Charles Properties Ltd (freeholder) indicating that the premises were trading as a restaurant (<i>Hen Cottage</i>) on 08/06/2004; • Letter from St Charles Property International Ltd (freeholder) indicating that S Mirza Baig 	

- was the leaseholder of the premises (known as *Hen Cottage Restaurant*) on 10/04/2006;
- Letter from London Borough of Camden (Council Tax & Business Rates) to St Charles Properties Ltd (freeholder) indicating that premises was in use as a hot food takeaway restaurant (*Hen Cottage*) on 27/09/2007;
 - Facsimile of proof of evidence from Jacob Spitzer (Marcus King Chartered Surveyors) dated 11/07/2008 stating that the ground and basement area were in restaurant/hot food takeaway use since at least 2008;
 - Letters between Selva & Co. (solicitors) and St Charles Property International Ltd (freeholder) dated 01/10/2008 and 03/10/2008 indicating that M Baig was the leaseholder of the premises at those times;
 - Letter from Savoy Stewart (surveyors) to Marcus King Chartered Surveyors (leaseholder's representative) indicating that Mr S Mirza Baig was the leaseholder of the ground and basement floors of the premises on 16/07/2008;
 - Rent review memorandum from St Charles Property International Ltd (freeholder) indicating that S Mirza Baig was the leaseholder of the ground and basement floors of the premises on 22/07/2008;
 - Invoice / Statement document from St Charles Property International Ltd (freeholder) indicating that S Mirza Baig was the leaseholder of the premises (known as *Fri-Chiks Restaurant*) on 25/12/2008;
 - Certificate of Hygiene issues by Kitchen Hygiene Ltd confirming cleaning of kitchen equipment of premises (known as *Fri-Chiks*) on 16/04/2010.

The applicant has also submitted the following plans:

- A site location plan outlining the application site (ref. 001 rev D1);
- Existing basement and ground floor plans (ref. KTR.11.S).

Council's Evidence

There is relevant planning history on the subject site but no relevant enforcement history:

PE9700680R1 - Change of use and works of conversion, including alterations to the rear elevation to provide one 1 bedroom studio flat and one two bedroom maisonette. Planning permission granted 22/12/1997

9003134/R2 - Change of use of No. 9 from retail to restaurant and the front part of the ground floor of No. 11 from restaurant to retail and the installation of a new ground floor frontage in connection with the provision of a restaurant. Planning permission granted 23/08/1990

AC2006/B/P1/P2 - A fascia sign, lettered "THE FAVOURITE RESTAURANT" in green and with two trademarks lettered "DRINK COCA-COLA" in white on a red ground all on a white perspex panel and internally illuminated. Advertisement consent granted 24/08/1964

AC2006/A/P1/P2 – A double-sided projecting sign, lettered "DRINK PEPSI-COLA" in blue on a red, white, grey and blue "Crown Cork" on yellow stripes and "CAFE" in blue, all on a white perspex panel and internally illuminated. Advertisement consent refused 12/06/1962

AC2006/P1/P2 - A double-sided projecting sign, lettered "CANADA DRY" in red on a green perspex ground and "RESTAURANT" in black, all on a white perspex panel and internally illuminated. Advertisement consent granted 19/01/1962

Both the application form and drawing (no. 09A) for the approved application (ref. PE9700680R1) describe the ground floor of the premises as a restaurant in 1997. An earlier planning approval (ref. 9003134/R2) and supporting documents describe the use of the ground floor of the premises at no. 11 as a restaurant and dining area in 1990.

The Valuation Office Agency records indicate that the ground floor of the premises has operated as a restaurant since at least 01/05/2005.

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 applicant’s supporting documents and information indicate that a hot food takeaway use has been in existence since at least 2000 and has operated continuously as such until the present time. Approved plans, previous application forms and other information do not contradict this assertion.

The information provided by the applicant is therefore deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the use began more than 10 years from the date of this application as required under the Act. Furthermore, the Council does not have any evidence to contradict or undermine the applicant’s version of events.

Recommendation: Approve