

JO/P6294
7 December 2016

London Borough of Camden
Town Hall
Argyle Street
London
WC1H 8ND

Dear Sir/Madam,

Town & Country Planning Act 1990
Basement and Ground floor 58-60 Marchmont Street, WC1N 1AB
Application for a Certificate of Lawfulness of Existing Use
Planning Portal Ref: PP-05662856

On behalf Atreea LLP ('the Applicant'), please find enclosed an application for a Certificate of Lawfulness of Existing Use with regard to the basement and ground floor of 58-60 Marchmont Street as a Sui Generis Use comprising elements of retail (Class A1) and restaurant (Class A3).

The Applicant is entitled under Section 191 of the Town and Country Planning Act 1990 to seek a Certificate of Lawful Existing Use or Development (CLEUD) by the submission of evidence relevant to the case to seek confirmation of the lawful use of the land in question. The evidence should establish both the factual position of the use of the land/property for a period of 10 years or more and prove the lawfulness of the use in planning terms. It is important to distinguish between the determination of a CLEUD and other planning-related applications. Unlike the latter, which may be open to subjective opinion, the determination of a CLEUD application must be based upon factual evidence and relevant Planning Law. The onus of proof is held to be with the applicant in the submission of sufficient evidence. However, paragraph 8.15 of Annex 8 of Circular 10/97: Enforcing Planning Control states that:-

"Where the burden of proof is on the Appellant, the Courts have held that the relevant test of the evidence on such matters is the 'balance of probability'. As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely 'beyond reasonable doubt'."

The Circular goes on to state that the applicant's evidence does not require independent corroboration in order to be accepted. Provided that the Local Planning Authority has no evidence of its own or from others to contradict "or otherwise make the applicant's version of events less than probable" and, provided that the applicant's evidence is sufficiently precise and unambiguous, the certificate should be granted on the balance of probability. The Circular also importantly confirms that:

Architecture Planning Interiors

Old Church Court, Claylands Road, The Oval, London SW8 1NZ

T 020 7556 1500

www.rolfe-judd.co.uk

DD 020 7556 1533

E john@rolfe-judd.co.uk

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"The Local Planning Authority should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application".

Site Location

The site is located on the eastern side of Marchmont Street, within the Bloomsbury Conservation Area. The site is also located within Marchmont Street Neighbourhood Centre which typically comprises Victorian terrace properties with commercial ground floors and residential upper floors. The site is a five storey Victorian terrace property, comprising the basement, ground and four storeys above. The basement and ground are occupied by 'Alara' a health shop and organic Café with residential upper floors.

Background

A planning application was submitted on 27th February 2002 for the installation of a cold store in the rear yard area associated with the retail and café use. The drawings submitted with this application dated August 1999 describe the use of the building as retail/café.

A kitchen with cooking facilities was installed within the basement circa 17 years ago. The kitchen enabled primary cooking to take place on site rather than ordering in pre-prepared food to reheat. Part of the ground floor became a sit down café serving freshly prepared hot and cold foods with internal and external seating available for customers of the café.

Existing Plans have been submitted with this application showing the layout of the ground floor and basement and the extent of the A1 and A3 uses. The ground floor is laid out with the sales area for both the A1 and A3 use on the left and the A1 towards the rear. The A3 element is situated on the right side of the unit with the hot and cold food serving area, drinks preparation station, fridges and seating area. There is external seating immediately outside the front of the ground floor. Customers also have access to a W/C at the rear of the ground floor. The basement contains storage and staff rooms ancillary to the ground floor and a large kitchen and food preparation area at the rear of the basement, with direct access to the rear yard.

Evidence of Use

Our client has been the leaseholder of the basement and ground floor of the property for since December 1999. The leaseholder is therefore intimately acquainted with the use over the last ten years. The following evidence has been submitted in support of the application:

- A planning application for the above property (Council Ref: PSX0204098), submitted on 27th February 2002 for the installation of a cold store in the rear yard area associated with the retail and café use on the basement and ground floors. The plans dated August 1999 (Drawing reference: 0004/MS58&60/E/01.A) submitted with this application show the ground floor and basement in use as 'retail/café/other'.
- A Statutory Declaration from the leaseholder of Alara, Parvaneh Khosravi, confirming that from 24th September 1999 the basement and ground floor of 58-60 Marchmont Street has

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been as a mixed use comprising elements of A1 (retail) and A3 (café). The basement and ground floor have been used for the sale of health products and foodstuffs, for the preparation of hot and cold food and hot beverages on site and for the sale and consumption of hot and cold food and hot beverages on site.

- A Statutory Declaration from the previous owner of Alara, Alexander George Smith (owner 1978-2006) confirming the basement and ground floor of 58-60 Marchmont Street has been used as a mixed use comprising elements of A1 (retail) and A3 (cafes) from December 1980.
- A Statutory Declaration from the Accountant for Alara, Saeed Ferdos of Flintham Mackenzie Ltd, confirming that since his appointment as accounts the basement and ground floor of 58-60 Marchmont Street has been used as a mixed use comprising elements of A1 (retail) and A3 (café).
- A Statutory Declaration from the leaseholder of 57 Marchmont Street (CV Hair and Beauty) Ian Broderick. The declaration confirms that since he has been the leaseholder of 57 Marchmont street (2003) the basement and ground floor of 58-60 Marchmont Street has been used as mixed use comprising elements of A1 (retail) and A3 (café).
- A Statutory Declaration from an employee of Alara since December 2000, Ms Vilma Maano, confirming that since this date the basement and ground floor of 58-60 Marchmont Street has been used as a mixed use comprising elements of A1 (retail) and A3 (restaurants).
- Dated photographs of the frontage of 58-60 dating from 2008-2016 show the use of the ground floor as Alara since at least 2008.
- Online reviews written by customers of Alara between 2007-present demonstrate the use of the ground floor as a mix of A1 and A3 elements. A sample of the reviews have been submitted with this application and include the following comments:
 - *'There is a café where you can grab lunch if you are in a hurry'* (December 2008).
 - *'come at lunch time and try some delicious vegetarian grub from the hot bar in the corner and enjoy it alongside others at the outside tables'* (March, 2009)
 - *'range of products is generally broad and café is nice to sit outside in the summer'* (May, 2013)
- Invoices for fresh produce and kitchenware ordered to Alara from 2010 to present have been submitted with this application. The invoices demonstrated the food which is ordered and prepared on-site within the kitchen at basement level to be served within the ground floor of Alara and to be eaten on or off the premises. Invoices from prior to 2010 (6 years prior to present) are not kept by the owner and therefore no invoices prior to 2010 have been submitted.

In conclusion, it is sufficiently evident from the documentation submitted that on the balance of probability, the use of the basement and ground floors of 58-60 Marchmont Street has been used continuously as retail (Class A1) and restaurant (Class A3) for at least 10 years. It is therefore considered that an acceptable body of evidence to substantiate the burden of proof has been provided and that on the balance of probability, having weighed all of the available evidence, the application should be supported and a Certificate of Lawful Existing Use should be granted to

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establish the use of the basement and ground floor as a mixed Sui Generis use comprising elements of retail (Class A1) and Restaurant (Class A3).

In support of this application the following has been submitted:

- Location Plan
- Existing Plans ref: 23489-E02 Rev A and 23489-E01
- Plans submitted with planning application ref: PSX0204098
- 5x Statutory Declarations
- Photographs
- Online reviews
- Invoices
- Requisite Fee

We trust that the information submitted is sufficient for the application to be registered and considered by the Council. Should it be necessary to provide any additional information in support of the application, please do not hesitate to contact the undersigned.

Yours faithfully,

John Osborn

For and on behalf of
Rolfe Judd Planning Limited