



Planning & Development Ltd

JMS Planning & Development Ltd

**STATEMENT IN SUPPORT OF A
CERTIFICATE OF LAWFULNESS FOR PROPOSED
USE AS SHOP (USE CLASS A1)
AT
325 KENTISH TOWN ROAD
LONDON
NW5 2TJ**

Proposal: CLOPUD for Proposed Shop Use

Client: Treats Foods Limited

Date: January 2018

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SECTION 1: INTRODUCTION

- 1.1 This Statement has been prepared by JMS Planning & Development Ltd (JMSP+D) and is submitted in support of an application for a Certificate of Lawfulness for a Proposed Use or Development (CLOPUD) in respect of 325 Kentish Town Road, London, NW5 2TJ, to confirm that the proposed use of the site as an A1 (use) with associated seating up to a maximum of 28 seats is authorised.

- 1.2 This Statement sets out the comprehensive justification in respect to the proposed CLOPUD and confirms that on the 'balance of probability' that the use of the premises as an A1 (shop) use with a limited number of seating, to a maximum 28 seats, is considered lawful. This is based on the Council's own assessment of the use of the premises along this part of Kentish Town Road where it is acknowledged that the existing Pret a Manger unit, which currently has 28 seats, is Use Class A1 and the adjacent Tolli unit (with circa 28 seats) is in Use Class A1. In addition, Caffe Nero has recently opened in the same parade, with 49 covers (40 inside and nine outside) and is trading under an A1 Use.

- 1.3 The submission of this Certificate follows an application for a change of use from shop (Use Class A1) to coffee shop (Use Class A1/A3) to be occupied by Starbucks. This application was refused by decision dated 10 March 2016, reference: 2015/7282/P, which in turn was dismissed at appeal (PINS Ref: APP/X5210/W/16/3158351) by decision dated 20 January 2017.

- 1.4 The use of 325 Kentish Town Road by Starbucks is no longer proposed and my client wishes to confirm how the site can be utilised in order to maximise its marketing. Since this time, the freeholder of the site has been in negotiations with various A1 retailers to occupy the premises including a number of baker/delicatessen type operations which whilst trading under an A1 retail use would have a limited number of covers. Because of the history of the site a Certificate of Lawfulness for Proposed Use has been submitted to the Council to give some certainty to the level of seating which could be provided on site without the A1 use being lost or compromised.

1.5 This Statement firstly sets out details of the site including its location and surroundings. Section 3 details the planning history of the premises. The legal approach to this matter is set out in detail within Section 4. The justification for the issuing of the Certificate is set out in Section 5. Conclusions are drawn in the final section at Section 6.

SECTION 2: SITE AND SURROUNDINGS

- 2.1 The application site lies on the western side of Kentish Town Road in close proximity to Kentish Town Underground Station (Northern Line). The site comprises a three storey property with a shop (class A1 use) on the ground floor and a former residential unit (use class C3) above.
- 2.2 Planning permission has previously been granted for the redevelopment of the site to facilitate the construction of four additional units at upper level (LPA Ref: 2015/2605).
- 2.3 The application site is not located within a conservation area, neither is the property a listed building or a locally listed building.
- 2.4 The property fronts directly onto Kentish Town Road and is located within a Core Shopping Frontage of Kentish Town Town Centre. Kentish Town Town Centre provides a range of shopping and service uses and is acknowledged by the London Borough of Camden (LB Camden) within its planning guidance on Town Centre's, Retail and Employment (CPG 5) as having a good range of shops and services for its size including many independent traders and food and drink uses.
- 2.5 The application site is long and narrow and fronts directly onto the pavement of Kentish Town Road; at the rear the application site fronts York Mews. Kentish Town Road (A400) is served by numerous bus routes and the site is located in close proximity to Kentish Town Underground and Railway Station and therefore has good transport facilities. As a consequence the application site has an excellent level of accessibility with a Public Transport Accessibility Level (PTAL) of 6a.

SECTION 3: PLANNING HISTORY

- 3.1 The most relevant planning history relates to a planning application ref: 2015/7282 for *“Change of use of ground floor from retail (Class A1) to a coffee shop (Mixed-Use Class A1/Class A3) and alteration to shop front”*. The proposed coffee shop was to be operated by Starbucks. The application was refused by decision dated 10 March 2016 for one reason namely, *“The proposed change of use from retail (Class A1) to a coffee shop (Mixed-Use Class A1/Class A3) would result in the loss of a retail unit which would be harmful to the overall character, function, vitality and viability of the Kentish Town Centre, contrary to Policy CS7 (Promoting Camden’s Centres and Shops) of the London Borough of Camden Local Development Framework Core Strategy and Policy DP12 (Supporting Strong Centres and Managing the Impact of Food, Drink, Entertainment and other Town Centre Uses), the London Borough of Camden Local Development Framework Development Policies”*. This application was subsequently appealed and dismissed by appeal decision dated 17 January 2017. The Inspector concluded that the proposal would be likely to adversely affect the character, function, vitality and viability of Kentish Town Town Centre and was considered to be contrary to policy.
- 3.2 Prior to this, planning permission (LPA Ref: 2015/2605/P) was granted, dated 17th December 2015, for the development of the site for: *“Rear extension to existing retail unit (class A1), erection of mansard roof extension and three storey rear extension at 1st, 2nd and 3rd floor level of No. 325 Kentish Town Road and conversion of the 1 No. 3 bed self contained flat to create 3 No. 1 bed self contained flats at first, second and third floor level. Erection of three storey rear extension to infill space known as 10 York Mews to provide ground floor storage space and cycle store and 1 No. 3 bed maisonette on first and second floor. Provision of internal courtyard/terrace at first floor level with access from 10 York Mews and installation of green wall at first and second floor level of 10 York Mews (internal elevation).”*
- 3.3 Previous to this, a planning application (LPA Ref: 2010/5366/P) for a change of use of the ground floor from a Retail Unit (use class A1) to Financial and Professional Services (use class A2) was refused planning permission by a decision dated 2 December 2010 on the grounds that the loss of a retail unit would be harmful to the overall character, function, vitality and viability of the Kentish Town Town Centre.

- 3.4 Prior to this, planning permission was refused on 25 August 2009 for the erection of a two-storey rear extension and creation of an additional third storey with mansard roof (LPA Ref: 2009/1685/P).
- 3.5 On 21 May 2008 planning permission was granted under application LPA Ref: 2008/0925/P for shop alterations to provide a new side entrance door and allow access to the residential unit at upper floor level, and replacement of rear door with window following the removal of existing rear access staircase.
- 3.6 Planning permission was granted on 14 August 2007 (LPA Ref: 2007/3033/P) for the existing use of a rear part of the ground floor as a cheque cashing and money transfer service and associated office.
- 3.7 A part three-storey, part single-storey extension and mansard roof extension to existing shops and flats above to increase the floorspace above the shop and to provide a 1 x 1 bedroom unit at first floor level and 1 x 3 bed maisonette at upper levels was granted on 5 November 2004 (LPA Ref: PEX0300166/P).
- 3.8 Planning permission was granted on 31 January 1991 (LPA Ref: 8903083) for the erection of an additional storey at third floor level, an extension at rear first floor level and works for conversion to form three bedsitting flats and one bedroom flat.
- 3.9 More historically, planning permission was granted for an application (LPA Ref: 33398) on 2 March 1982 for the erection of a single storey rear extension for storage. On 11 September 1974 planning permission was granted for the installation of a new shopfront under application (LPA Ref: 19200). Planning permission was granted on 3 April 1967 for the installation of a new shopfront and the erection of a canopy at the rear of the premises (LPA Ref: 3339).

Planning History Summary

- 3.10 There have been a number of applications on the site. The key relevant planning application is LPA Ref: 2015/7282/P which was refused planning permission by a decision dated 10 March 2016 for change of use of the site from retail use to mixed use class A1 and A3 coffee shop (and subsequent appeal which was dismissed).

SECTION 4: LEGAL APPROACH

- 4.1 This application concerns a Certificate of Lawfulness for Proposed Use submitted under Section 192 of the Town & Country Planning Act 1990 (as amended). An application for a certificate under Section 192 must be granted where the local planning authority is provided with information satisfying them of the lawfulness, at the time of the application, of the use described in the application. In all other cases, they must refuse the application. A certificate may be issued if the proposed use or operation does not constitute development or if it does but the development is 'permitted development' under the GPDO, or the carrying out of it would be in accordance with an existing planning permission.
- 4.2 The issue of lawful use is considered specifically within the National Planning Practice Guidance (NPPG). It is confirmed that anyone can apply to the local planning authority to obtain a decision on whether an existing use or development, or a proposed use or development, is lawful for planning purposes or not. If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a Lawful Use Certificate. It is confirmed that an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.
- 4.3 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 canvas 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.
- 4.4 In dealing with an application the local planning authority has no discretion since it is making a determination of law based on proposed facts. If the applicant is aggrieved by the determination of the local authority he may appeal to the Secretary of State.

SECTION 5: JUSTIFICATION FOR ISSUING OF CERTIFICATE

- 5.1 This section of the applicant's statement sets out the justification for the proposed CLOPUD.
- 5.2 The authorised use of the premises is retail – Use Class A1 – as confirmed by the planning history detailed in Section 3 and more recently in the Officer's report and Council's appeal statement in relation to application 2015/7282/P. Specifically the Officer's delegated report lists the application site (325 Kentish Town Road) as A1 (paragraph 2.4) and in the Council's appeal statement (set out in letter dated 16 November 2016) paragraph 1.1 confirms the use of the ground floor as 'retail' (and is confirmed elsewhere in the report in discussions). Accordingly, there is an acceptance by the applicant and the Council that the authorised use of the ground floor of 325 Kentish Town Road is retail – Use Class A1.
- 5.3 This application for a Certificate of Lawfulness of Proposed Use seeks confirmation that the occupation the premises by a retail occupier but including the provision of up to a maximum of 28 seats/covers would not change the use from Class A1 retail and therefore the proposal would be in accordance with the existing planning permission.
- 5.4 There is no suggestion that any A1 occupier of the premises will have up to 28 covers, but the figure of 28 has been settled upon as this is the number of covers within both the existing Pret A Manger at 341 Kentish Town Road and Tolli Patisserie at 327 Kentish Town Road, which are both classed as A1 uses by the Council in their assessment of application 2015/7282/P.
- 5.5 The proposed use is akin to the Pret a Manger at 341 Kentish Town Road, which forms part of the same frontage as the application site. This is a coffee shop and includes the provision of 28 seats (all with tables). The Council, in their delegated report, associated with the aforementioned application (2015/7282/P on the subject site) confirms the use of 341 Kentish Town Road as A1 use. This statement is relied upon further in the Council's Appeal Statement in relation to application 2015/7282/P.



Pret a Manger, 341 Kentish Town Road

- 5.6 A check of the planning history (using the Council's website) for 341 Kentish Town Road confirms that the authorised use of the ground floor unit is Use Class A1 (by planning permission ref: 2010/4338/P and not disputed in subsequent advertisement applications upon the site).
- 5.7 Tolli Patisserie at 327 Kentish Town Road was granted planning permission dated 31 May 1083 under application ref: F11/1/G/36322R1 for "*Use of the ground floor as a retail bakery with ancillary food preparation, cold food take-away and 'eat-in' facilities*". This unit also has 28 covers. In the Council's evidence to the recent appeal at 325 Kentish Town Road it has assessed Tolli Patisserie as an A1 use. In respect to Tolli Patisserie and the Pret a Manger, the area of tables on the site is similar to that proposed on the attached drawing 2C, attached as part of the supporting information. The precise manner of the proposed use is not known, it is proposed to be an A1 (Shop) operation and is likely to be in the form of a bakery/delicatessen. Such uses are, established as A1 uses. However, having a significant number of covers on the site can obviously introduce an element of A3 (Restaurant and Café) use which is more than ancillary. It is considered that the level of covers shown on submitted drawing 2C is insufficient for this to occur. Each application is judged on its own merits and it is considered that a view of the Certificate of Lawfulness can be undertaken based upon the submitted layout plan and, the principle of the number of the covers based on the Council's assessment of immediate surrounding uses elsewhere in the same parade.
- 5.8 The proposed use of 325 Kentish Town Road is a retail operation with potentially some limited covers. Therefore, to provide certainty to the applicant, comfort to the future occupier, and to ensure consistency to the approach taken by the Council to retail uses with ancillary seating, this application has been submitted. Based on the above and the evidence provided the proposal will be Class A1.

SECTION 6: CONCLUSIONS

- 6.1 In dealing with applications for Certificates of Lawful Proposed Use or Development a decision is based on making a determination of law based on proposed facts. The application site is in retail (Class A1) Use as demonstrated by the planning history of the premises and confirmed in various documents produced by the Council detailed above.
- 6.2 The proposed use comprises a retail use with a maximum of up to 28 seats/covers, which is as currently exists at 341 Kentish Town Road and occupied by Pret a Manger and also in respect to Tolli Patisserie at 327 Kentish Town Road. The Council has consistently defined Pret a Manger's use at 341 Kentish Town Road as Class A1 which is further confirmed in the site's planning history. This is also the case in respect of Tolli Patisserie. Accordingly this application seeks to provide clarification that the proposed occupation of the application premises (325 Kentish Town Road) in a form similar to that as at Pret a Manger at 341 Kentish Town Road and Tolli Patisserie, with a seating area for a maximum of 28 seats would be classified as Class A1 retail.
- 6.3 Accordingly, it is respectfully requested that a Certificate of Lawfulness for Proposed Use (CLOPUD) is forthcoming in respect of the proposed use of 325 Kentish Town Road for a retail unit with a maximum of 28 seats/covers.