

<b>LDC Report</b>		11/12/2018
<b>Officer</b>		<b>Application Number</b>
Thomas Sild		2018/4836/P
<b>Application Address</b>		<b>Recommendation</b>
126 Boundary Road London NW8 0RH		
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
Use of the ground and basement floors as language school (Class D1).		
<b>Assessment</b>		
<p>The application site is located on the western side of Boundary Road</p> <p>The application seeks to demonstrate that the ground and basement floors have been in Use D1 for a period of at least 10 years or more such that the continued use would not require planning permission.</p> <p>The last record of a lawful use for the ground floor dates to 1958 where a retail (A1) use was established</p> <p>The applicant is required to demonstrate, on balance of probability that the existing educational unit has existed for a period of 10 or more years.</p> <p><b>Planning History</b></p> <p><b>8073/NW (Full Planning Permission)</b> – Use of the first and second floors of no. 126 Boundary Road Hampstead,, for light industrial or office purposes <b>Refused - January 1951</b></p> <p><b>8073/NW (Full Planning Permission)</b> – Use of the first and second floors of No. 126 Boundary Road, Hampstead, as a language school and reading room following change of use from offices. Informative stated that the use of the ground floor as a retail shop did not constitute development requiring planning permission, given this floor was already in retail use. <b>Granted - March 1958</b></p>		

## **Applicant's Evidence**

The applicant has submitted the following information in support of the application:

- Appendix A: copy of the 1958 planning permission
- Appendix B containing: 21 photographs of the internal areas of the building, including ground and basement levels, dating from July 2018; 1 x photograph of a 2010 dated email from a student to the language school found inside the premises
- Appendix C: 1 x online text extract listing the location of the school, printed September 2018
- Appendix D: 1 x email from the British Council Accreditation Unit confirming that this body wrote to the language school at no. 126 Boundary Road since 2006
- Appendix E: Assorted Facebook screen shots with posting dates to December 2012
- Appendix F: 7 x Google Street View image photographs of the street showing the front of the premises with language school signage in June 2017, June 2016, June 2015, July 2014, September 2012, April 2012 and June 2008
- Appendix G: 1 x business rates bill dating to July 2018 describing the property as "school and premises"
- Document 1: Valuation document dated to April 2010 listing the ground floor a classrooms and basement as common rooms
- Document 2: UK Border agency letter dated June 2010
- Document 3: Dilapidations lease related letter dated to c2002
- Document 4: Lease agreement dated to September 2003
- Document 5: Insurance letter dated August 2007
  
- A site location plan outlining the application site
- A lower ground floor plan of the site (Drawing no: 18039/A11)
- A ground floor plan of the site (Drawing no: 18039/A12)
- A first floor plan of the site (Drawing no: 18039/A13)
- A second floor plan of the site (Drawing no: 18039/A14)

## **Council's Evidence**

The Council's own annual retail frontage survey for Boundary Road records the use of no. 126 as being D1 (Non-residential institutions) each year since records began in 2013 up to and including 2018.

## **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 internal photographs dating to July 2018 clearly demonstrate that the ground and basement

floors were not in retail use at that point but were in use as space directly related to the functioning of the language school as a D1 use, in this instance an office and common room. The appearance of the furnishings would indicate that this use had not changed for a substantial period, and most probably a period greater than 10 years.

The floorplans confirm that the ground and basement floors share access with the upper floors through a corridor with staircase and as such the existence of a continued separate A1 use on these lower levels would be improbable.

The Google Street View imagery shows the frontage in 2008 with the language school's signage clearly visible behind the ground floor window. Through the appearance of typical office type furnishings including vertical blinds and pot plants on the window ledge, there is no indication from this item of evidence that the ground floor was being used for retail at this time nor in any of the subsequent images. This would support the case that the ground floor and also the basement were used as ancillary space for the function of the language school.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficient to demonstrate that 'on the balance of probability' the ground and basement floors at no. 126 Boundary Road have existed in educational use (D1) for a period of more than 10 years as required under the Town and Country Planning Act 1990 as amended.

**Recommendation: Grant Certificate of Lawfulness**