

LDC Report

18/03/2019

Officer	Application Number
John Diver	2018/5257/P
Application Address	Recommendation
31 Hatton Garden London EC1N 8DH	Grant certificate
1st Signature	2nd Signature (if refusal)

Proposal:

Continued use of units within property as retail (A1) for part ground floor and business (B1a/B1c) for all other floors.

Assessment:

1. Application site and proposal

- 1.1. The application relates to a four storey (plus basement) commercial property on Hatton Garden, EC1N. The building is not listed but is located in the Hatton Garden Conservation Area. The site is also located within the designated Hatton Garden 'Business improvement district', the Central London Activities Zone, as well as the Hatton Garden Town Centre. The application property is not listed, nor situated adjacent to any listed buildings or structures.
- 1.2. The application seeks to demonstrate that the use of the building for purposes including a mixture of retail and business purposes has been in continuous use for a period of 10 years or more such that the continued use of the property for these purposes would not require planning permission.
- 1.3. The uses and split of uses outlined by the applicants are as follows:
 - Use of part basement, part ground, first, second and third floors as Class B1 use
 - Use of part Ground floor as Class A1 use
- 1.4. The applicant is required to demonstrate that, on balance of probability, the existing units within the building have been in continuous use within the stated use class for a period of 10 or more years.

2. Applicant's Evidence

- 2.1. The applicant has submitted the following information in support of the application:
 - Covering letter produced by Rolfe Judd
 - Photographs of property

- VOA Business Rate registrations
- Leases for the building across a 25 year (19 in total) covering period from 1993 – present

2.2. The applicant has also submitted the following plans:

- Existing floor plans (basement – roof) produced by Kyson Ltd (ref.0999A- 1003A)
- A site location plan outlining the application site

3. Council's Evidence

3.1. The planning history of the site is summarised as follows:

- **2018/0543/P:** Planning application was withdrawn prior to determination on the 03/07/2018 after officers advised that the works would be unlikely to be supported in their current form. Permission had been sought for: *'Enlargement and refurbishment of existing building including mansard roof extension, rear infill extensions to lightwell (parts two, three and four storeys), creation of roof top plant enclosure and replacement windows and shopfront to allow for use of building as office (B1) and retail (A1).'*
- **8601385:** Planning permission was granted on the 09/10/1986 for the *'Installation of a new shopfront to the ground floor'*

3.2. There are no records of current or historic planning enforcement action associated with the use of the application site.

3.3. VOA business rates information show that the property has been host to a number of separate units for a number of years with a range of activities. This information is summarised as follows:

Unit	Use	Size (m ²)	Date applied
1 St F Rear 31, Hatton Garden,	Workshop and premises	71.7	Aug 2012
Bst Frnt & Gnd F 31, Hatton Garden,	Shop and premises	74.1	Apr 2010
1 St F Frnt 31, Hatton Garden,	Offices and premises	34	Apr 2010
2 Nd F Rear Frnt Bldg 31, Hatton Garden,	Workshop and premises	7.5	Apr 2010
1 St F Middle Frnt 31, Hatton Garden,	Workshop and premises	15.7	Apr 2010
3 Rd F (frnt Bldg) 31, Hatton Garden,	Workshop and premises	36.8	Apr 2010
3 Rd F Cen 31, Hatton Garden,	Workshop and premises	13	Apr 2010
3 Rd F Rear 31, Hatton Garden,	Workshop and premises	10.8	Apr 2010
Gnd F Rear Bldg 31, Hatton Garden,	Workshop and premises	72.7	Apr 2010
Bst Rear Bldg (inc Bst Rear Of Frnt Bldg) 31, Hatton Garden	Workshop and premises	64.9	Apr 2010
2 Nd F Frnt At Frnt Bldg 31,	Workshop and premises	28.6	Apr 2010

Hatton Garden			
2 Nd F Centre Left At Frnt Bldg 31, Hatton Garden,	Workshop and premises	23.7	Apr 2010

3.4. Prior to the withdrawal of a previously submitted planning application, a site visit was made by officers to the site in April 2018. During the visit, the use of each of the independent units was inspected and the building was found to include numerous individual units which hosted a range of activities including multiple jewellery workshops, some offices as well as a retail unit. Details of the existing business occupiers were sought. This can be summarised as follows:

Floor	Name	Business type
Basement	Smith & Harris	Goldsmiths
	King of diamonds	Jewellery workshop
Ground	Bibs Polishers Jewellery workshop	Jewellery workshop
	The Hatton Garden Buying Centre	Shop
First	One to 25	Jewellery workshop
	Without	Office
	J Fouche	Jewellery workshop
Second	Patrick Wyatt Jewellery	Office for Jewellery workshop
	Amanda Mansell Jewellery	Jewellery workshop
	TC Jewels & Angelique	Jewellery workshop
Third	Michael Fox	Jewellery workshop
	Gerry Glicksmans	Jewellery workshop
	Keddie	Office

3.5. The above list broadly accords with VOA data available for the property. At the time, it was requested that the plans submitted for the application were updated with the use of each unit annotated. On the 1st of June 2018, a revised set of plans was submitted to the LPA which confirmed that the majority of the buildings was in use as workshops, with some office areas as well as a retail unit in line with the above table.

3.6. Though VOA record indicate that the VOA tax records were only updated in 2010, it was noted during the site visit that the existing uses within each unit appeared to have been in situ for many years. Multiple business tenants /makers onsite confirmed that the building had been host to jewellery workshops since at least the turn of the 20th century, with some able to show pieces of equipment or metal working tools from this period that had been maintained on site ever since. The condition, layout and size of the various workshop units would suggest that this is indeed the case. Given that Hatton Garden has been the main centre of diamond and jewellery trade in London since the early 19th C, this anecdotal evidence is corroborated.

4. Assessment

4.1. 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.

- 4.2. Both the applicants as well as the Council are in agreement that the property includes a number of units which host a range of activities including retail, offices and workshops. This has been reflected in the submitted leases as well as the VOA rates evidence. Following the submission of further evidence by the applicants in relation to two units at second floor level (front and middle units), it was confirmed that at the time of the site visit / application submission the use of those units had changed to offices. Such a change would not have required permission and as such these uses remained lawful. There is no evidence that any units other than those at 1st and 2nd floor levels had been converted into office uses. There is also no evidence to suggest that any of the existing uses are unlawful. Confirmation is sought however that, other than the GF retail unit, all other activities within the site would fall within the B1 Use Class.
- 4.3. In making a decision as to what use class applies, the Council must decide what the existing primary use of the property is by looking at evidence provided and other relevant matters, such as the configuration and layout of the property, its day-to-day purpose and use, uses allowed under lease documents, operations at the property (occupation of any staff, noise etc) and any relevant planning history at the property.

B1 Use Class

- 4.4. Town and Country Planning (Use Classes) Order 1987 (as amended) sets out the various Use Classes within which activities may fall. The description for a B1 Use Class is set out below:

Class B1 – business:

- a) Offices – except those already mentioned within Class A2 (professional services)
- b) Premises for Research and Development
- c) Industrial processes which “can” take place within a residential area without damaging the “amenity of that area”

- 4.5. In relation to the units of office occupation, there is no doubt that a B1(a) use applies. There is also no doubt that the ground floor retail unit falls within class A1. This is reflected within the annotated plans issued by the applicants in the summer of 2018 and is not disputed. In order to establish the most appropriate class for the jewellery workshops though, officers sought advice from Camden’s legal team.
- 4.6. The advice received by officers was that, whilst the activities involved with jewellery making did require the use of metal working tools and ‘heavy’ tools requiring specialist extraction equipment, due to the relatively low intensity of these works they might most appropriately be described as ‘light industrial uses’. A key test as to whether such a light industrial use should be considered under Use Class B1(c) or B2 (general industrial use) involves consideration of its associated level of disruption. The former dedicated class for specialist metal working operations (B4 - specialist industrial group B) was revoked by the Use Classes (Amendment) Order 1995 and is no longer applicable.

4.7. The site adjoins properties which host residential units at upper floors and these two uses have coexisted for many years without the receipt of complaints in relation to noise, fumes or odour. The workshop uses are low intensity, without significant servicing requirements and minimal deliveries. Unlike a general industrial use, the workshops have therefore been able to operate within an area including residential uses without damaging the amenity of the area. This would indicate that, based upon the evidence received, the existing use of the workshop units would fall within the B1(c) section of Use Class B1. This would also remain consistent with the approach taken by the LPA with other properties hosting jewellery workshops in the Hatton Garden centre having given the same Use Class designation.

4.8. In line with the above, the information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the property is host to a number of units ranging from retail (A1), office (B1(a)) as well as workshops (B1(c)) and that those uses have been in situ for a period of at least 10 years. The continued use of the property within these use classes would therefore not require express planning permission.

5. Recommendation:

5.1. Approve certificate

5.2. At the time of writing, the property was lawfully host to the following units within the following use classes which began more than ten years ago:

- Basement unit 1 (front) B1(c), basement unit 2 (rear) B1(c);
- Ground floor unit 1 (front) A1, ground floor unit 2 (rear) B1(c),
- 1st floor unit 1 (front) B1(c), 1st floor unit 2 (middle) B1(c), 1st floor unit 3 (back) B1(a);
- 2nd floor unit 1 (front) B1(c), 2nd floor unit 2 (middle) B1(c), 2nd floor unit 3 (back) B1(c);
- 3rd floor unit 1 (front) B1(a), 3rd floor unit 2 (middle) B1(c), 3rd floor unit 3 (back) B1(c).

5.3. Continued use of these units under such use classes (in line with the Use Classes Order 1987) would therefore not require express planning permission / constitute 'development' in line with section 55 of the Town and Country Planning Act 1990.