

<b>LDC Report</b>		19/06/2019
<b>Officer</b>		<b>Application Number</b>
Mark Chan		2019/2192/P
<b>Application Address</b>		<b>Recommendation</b>
73 Regent's Park Road London NW1 8UY		Grant Certificate of Lawfulness (Proposed)
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
Continued use of existing ground floor unit for retail purposes (Class A1).		
<p>The current application seeks confirmation that the use of the existing shop unit by 'FaceGym' would constitute A1 retail use.</p> <p><b>Site Description</b></p> <p>The application relates to a three-storey mid-terrace building situated on the west side of Regent's Park Road. The building is in retail use at the ground floor and has a residential maisonette above.</p> <p>The site is within the Primrose Hill Conservation Area. The building is not listed, although the terrace of buildings to the south of the site on Chamberlain Street are Grade II Listed. The site is also within the Regent's Park Road Neighbourhood Centre and within an Article 4 area removing permitted development rights for the change of use from A1 (retail) to A2 (professional services).</p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>• Completed application form</li> <li>• Cover letter by Daniel Rinsler &amp; Co dated 23/04/2019</li> <li>• Statutory Declaration by Chief Executive Officer of FaceGym Ltd dated 23/04/2019</li> </ul> <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> <li>• Site Location Plan</li> <li>• Proposed General Arrangement - Drawing No. 1940-IDL-NA-GF-A-10-00</li> </ul> <p><b>Council's Evidence</b></p>		

### Relevant Planning History

2006/1454/P - Replace existing ground floor extension, extend existing first floor extension and loft conversion with new dormer to the retail (Class A1) and residential (Class C3) building. Granted 26/05/2006.

2005/2889/P - Alterations to shopfront of ground retail unit (class A1) to provide separate access doorway for masonette on upper floors and infill extension to the rear enclosing existing courtyard. Granted 22/09/2005.

### Unit EY10, Coal Drops Yard

2018/3887/P – Certificate of Lawfulness (Proposed) for the proposed business use as a retail shop (Class A1). Granted 19/09/2018.

### Site visit

A site visit to the property was undertaken on 13/05/2019. The officer was satisfied that the shop unit is in A1 retail use.

### **Relevant Policies**

The scheme can only be assessed against the relevant planning legislation which is the Town and Country Planning Act 1990, the Town and Country Planning (General Permitted Development)(England) Order 2015 (“GPDO”) and the Town and Country Planning (Use Classes) Order 1987.

This lawful development certificate is to determine whether the proposed use represents a material change of use from the existing use. If it were found that the proposed change would not constitute a material change of use, then this change would be ‘permitted’ and hence could go ahead without the specific grant of planning permission from the local planning authority.

An assessment of its planning merits as to its acceptability under current policies is therefore not relevant or possible here, as this is purely a legal determination.

### **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 proposal involves the use of the existing retail shop unit (A1 use) by ‘FaceGym’ and seeks to confirm whether the proposed business model would be considered retail use, and consequently, would not require planning permission for a change of use. The principle planning considerations would be the land use of the site.

Of relevance is the recent approval of a certificate of lawfulness (proposed) for the use of a unit within Coal Drops Yard by FaceGym. Details of FaceGym's business model and the proposed store layout and turnover were submitted in support of the certificate application. The Council considered the proposed use to be within the A1 Use Class (similar to a hairdressers), and as such, considered that no change in use class would take place and therefore planning permission was not required.

It is noted that the business model provided in support of this application remains the same as that submitted for the abovementioned CLOPUD application, and that the proposed layout at the application site is very similar to that of Unit EY10, with a retail area and welcome/till point to the front of the shop, a retail display area behind this, and treatment chairs and WCs to the rear of the shop. The proportion of service treatment to retail sales would also be the same, anticipated to be from 70/30 to 60/40.

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 sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the use of the existing retail unit by FaceGym constitutes A1 retail use.

**Recommendation: Grant Certificate of Lawfulness**