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**Via Planning Portal Only**

05 July 2019

Dear Sir/Madam,

**CERTIFICATE OF LAWFULNESS OF EXISTING USE  
FOR THE CONTINUED EXISTING USE OF THE PREMISES AS A RESTAURANT (USE CLASS A3)  
124 SOUTHAMPTON ROW, LONDON, WC1B 5AA**

Please accept this covering letter as an accompaniment to a lawful development certificate application to confirm that the use of 124 Southampton Row as a restaurant (Use Class A3) is lawful. The application is submitted under Section 191 of the Town and Country Planning Act 1990 (as amended).

**The Site**

The application site comprises a unit at ground floor on the east side of Southampton Row. The unit forms part of a wider terrace composed of an imposing mansion block in residential use on the upper floors and a range of commercial uses at ground floor. The building is located within the Bloomsbury Conservation Area and is identified in the Conservation Area Appraisal and Management Strategy as a 'positive contributor' to the character and appearance of the area.

**Historical Use of Application Site**

An extensive planning history is useful in establishing the historical use of the application site. The following planning applications all define 'restaurant' use:

On 21 August 1975 advertisement consent was granted by Camden under reference CA/89/AD117. The application defined the existing use of the unit as a 'restaurant' (see Appendix 1).

On 20 December 1977 full planning permission was granted by Camden for the retention of an extract stack from the kitchen under reference CTP/N14/9/5/21136. The application defined the existing use of the unit as a 'restaurant' validated by the nature of the application (see appendices 2a and 2b).

On 19 September 1977 full planning permission was granted by Camden for alterations to the shopfront under reference CTP/N14/9/5/24209. The application defined the existing use of the unit as a 'restaurant' (see appendix 3).

On 13 June 1985 full planning permission was submitted by the well-established restaurant chain Garfunkel's seeking permission for alterations to the shopfront and signage. The application defined the unit as a restaurant, validated further by the named restaurant operator Garfunkel's as the applicant (see appendix 4).

In 1996 a planning application was submitted which identified the unit as two restaurants, a pizza restaurant at ground floor and a restaurant/jazz club at basement level referred to as Southampton's (see appendix 5).

On 6 February 2001 full planning permission was granted by Camden under reference N14/9/5 for the retention of a shopfront. The application form and plans defined the unit as a restaurant (see appendices 6a, 6b and 6c).

### **Existing Use of Application Site**

The planning unit comprises the ground and basement floors of 124 Southampton Row. Since 2001 the unit has been occupied by Starbucks over both floors totalling around 280sqm. The unit provides significant seating areas over both floors allowing customers to consume food and drink on the premises. As such, customer facilities are provided by virtue of full WC and baby changing amenities. The unit is defined as a 'restaurant and premises' by the valuation office (see appendix 7).

### **The Use Class of the Application Site**

A previous application was withdrawn because the LPA were not satisfied, on the balance of probability, that the premises could be defined within the A3 use class (restaurants and cafes). The LPA considered the premises to lawfully fall within the A1 use class (shops).

Those respective uses are defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) as follows (with emphasis underlined):

***Class A1. Shops***

*Use for all or any of the following purposes—*

- (a) for the retail sale of goods other than hot food,*
- (b) as a post office,*
- (c) for the sale of tickets or as a travel agency,*
- (d) for the sale of sandwiches or other cold food for consumption off the premises,*
- (e) for hairdressing,*
- (f) for the direction of funerals,*
- (g) for the display of goods for sale,*
- (h) for the hiring out of domestic or personal goods or articles,*
- (i) for the washing or cleaning of clothes or fabrics on the premises,*
- (j) for the reception of goods to be washed, cleaned or repaired,*
- (k) as an internet café; where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet*

*where the sale, display or service is to visiting members of the public.*

***Class A3. Restaurants and cafes***

*Use for the sale of food and drink for consumption on the premises.*

The LPA previously interpreted the operational use of the premises in determining that A1 use was the most appropriate use class designation. They considered that, as food is prepared elsewhere and then heated up on the premises when ordered, the use was more akin to retail use. They explained further that, with an A3 use, the preparation and cooking of raw food is undertaken on the premises in relation to the sale of food and drink to be consumed at the premises.

It is respectfully noted that this interpretation does not take full account of the actual characteristics and context of the operation. As per the extract from the Use Classes Order above, A3 use is defined as a use *for the sale of food and drink for consumption on the premises*. Interestingly, this does not mention ‘hot food’ but in any case, by virtue of the wording, it should follow that consideration is given to the level, and indeed the potential, for the premises to accommodate patrons to be able to consume food and drink on the premises.

This is a matter of fact and degree and in this instance, the application site accommodates a significant floor area, far exceeding the average size of a sandwich/coffee shop. As a result, there are significant seating areas which substantiates the position that the use is more akin

to A3 use (for consumption of food and drink on the premises). This is consolidated by the ratio of seating which clearly highlights a use which is intended to accommodate patrons on the premises and by proxy thereafter, the presence of customer facilities consolidates the position further. This is an arrangement that has remained largely unchanged since the 1970's as per the historical position listed above.

### **Relevant Case Law**

The position of whether a use falls within the A1 or A3 use class is backed up by several examples of case law, set out below with emphasis underlined.

In the case *Express Coffee Company Ltd v SOS* 19/4/02 and *Kensington & Chelsea* 09/08/2001 an enforcement notice alleged use of a ground floor shop as A3. The inside of the premises was occupied by mainly seating space with steel bar counters to the rear. The Express Coffee Company Ltd argued that it had operated the premises since 1996 when a coffeeshop /sandwich bar had commenced. It claimed that the use was similar to many coffee shops where hot food was sold for consumption on and off the premises and the sale of hot and cold food was split about fifty-fifty. An inspector noted that the fixed seating could accommodate about 20 people and this did not amount to a few customers eating on the premises. From observation he noted that the majority of people were seated and eating pizzas and this gave the impression of a café where consumption of hot food on the premises was the norm. Notwithstanding the cyclical nature of the hot and cold food sales during each day with varying amounts of people eating in and taking food away, the inspector judged that it fell within class A3 as alleged. The decision was taken to the High Court with it being claimed that the inspector placed too great a reliance on customers consuming hot food on the premises particularly over the lunch and evening periods. It was held that the inspector had observed that seating was available for around 40 people and had correctly decided on the basis of the evidence that a material change of use had occurred. Consequently there was nothing irrational or perverse in the decision.

In the case *Hammersmith & Fulham* 15/09/2000 DCS No 043-036-447 an enforcement notice alleged that a shop was being used for a restaurant. An inspector placed weight on previous visits by council officers to the premises which indicated that hot food was sold as supported by an extensive menu. At the time of the inspector's visit there remained hot food available including a full breakfast together with the presence of a microwave cooker, toasters and a hot plate. When taken together with the potential to seat around 20 customers, the inspector concluded that the establishment operated in the nature of a café rather than a sandwich bar.

In the case *Westminster* 06/10/1993 DCS No 058-521-413 enforcement action was taken relating to an alleged A3 cafe use in a patisserie. It was argued that the cafe element was not

such as to take the use out of the A1 Class. An inspector noted that there was a fine distinction between A1 and A3 uses, but in this case the extensive seating areas and range of food sold convinced him that the A3 activity at the premises was more than ancillary.

In the case *Bath & North East Somerset 03/10/2002 DCS No 040-623-464* enforcement action taken against a Starbucks coffee shop in Bath alleged a change of use from a shop to A3. An inspector concluded that the coffee shop was of a type that had recently become popular and held that it did not fit easily into any of the categories of retail use. He reasoned that it could fall within either Class A1(a) or A1(d) relating to the sale of goods other than hot food or the sale of sandwiches or cold food for consumption off the premises, provided that the retail sales element remained the primary purpose of the enterprise. It was noted that the appellants did not dispute the council's survey showing that in excess of 80 per cent of customers remained on the premises to consume their food and drink even though they had the choice whether or not to do so. The latter was sufficient, in his opinion, to rule that the use was primarily A3 and consequently there had been a breach of planning control.

### **Summary & Conclusion**

The Use Classes Order defines A1 use as one for the retail sale of goods other than hot food and/or for the sale of sandwiches or other cold food for consumption off the premises. A3 use is defined as one for the sale of food and drink for consumption on the premises.

A3 use is no longer defined by 'hot food' and in any case, the true test is one of fact and degree. In this case, the premises have remained largely unaltered from the 1970's where there is clear evidence the premises were used as a restaurant. The subsequent use of the premises by Starbucks does not change this arrangement internally and the scale of the operation, including the proportion of seating and level of customer facilities highlights that the unit is clearly used as a business for the sale of food and drink for consumption on the premises (A3 use).

I trust the commentary above is clear but please do not hesitate to contact me if you have any queries or if I can offer any further points of clarification.

Yours sincerely

**Allen Sacbuer**  
**Associate**  
**SM Planning**