

LDC Report (Existing)	25/07/2017	
Officer	Application Number	
Charles Thuaire	2019/0901/P	
Application Address	Recommendation	
136-138 Kentish Town Road London NW1 9QB	Grant Certificate of Lawfulness for Existing Development	
1st Signature	2nd Signature (if refusal)	
Proposal		
Use of basement and ground floors as Class A1 retail		
Assessment		
Site		
The application site is a basement and ground floor double fronted unit with flats above within Kentish Town shopping centre.		
History		
None relevant.		
Proposal		
The application relates to the use of the basement and ground floors unit for continued retail purposes within Class A1 of the Town and Country Planning (Use Classes) Order 1987 as amended. The previous use was a furniture shop until 2015 when the current client moved in and started operating a mixed retail/café. The application is to regularise its lawfulness.		
Applicant's Evidence		
The applicant has submitted the following information in support of the application:		
<ul style="list-style-type: none"> • Site location plan • Floor plan showing layout of unit and its different functions; • Business receipts showing takings from takeaway and eat-in sales during March-April; • Emailed information on history and current usage of retail unit. 		
Council's Evidence		
A site visit to the property was undertaken on the 4.4.19. The officer was satisfied that the unit		

appeared to function as a Class A1 retail shop with only ancillary seating for eating & drinking.

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 case are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

The Council considers that the established and lawful use of the unit was Class A1 before 2015 when it was occupied by a furniture shop. It considers that the unit continues to operate as a retail unit with an ancillary cafe.

The shop is called ‘Natural’ with its fascia sign saying ‘coffee lounge/organic and natural food store’. In accordance with the submitted floorplan, there is a large counter for takeaway and retail trade; 3 large areas of the shop for display shelves of retail goods; 2 storage rooms, cold room, staff room and toilets at the back; 2 seating areas for eating on lower ground and raised mezzanine floors, comprising about 45 seats; a basement store. The counter sells cold food (sandwiches and salads) and hot drinks with a microwave and toaster for heated up goods. There is no primary cooking on site.

The operation appears in visual character and function to be a large retail unit with extensive areas for traditional retail shelving and display but also incorporating a typical snack bar element with seating. Although the latter appears extensive in area, the space it occupies is a small proportion of the total unit’s area. It is estimated that approximately 80% of the total floorspace is occupied by retail display, counter and ancillary staff, customer and storage facilities, whereas only 20% is occupied by seating. Furthermore analysis of the business receipts shows that, in March for example, the vast proportion of sales was for takeaway goods whereas ‘in sales’ was only about 18%. The receipts submitted for a week in April show that in-sales were only 10% of the takeaway sales total. Thus the business turnover shows also that the unit has a predominantly retail takeaway function.

It is concluded that overall the unit continues to be a Class A1 retail unit with only an ancillary element of café seating for Class A3 purposes. Sufficient evidence has been provided to demonstrate that, on the balance of probability, the basement and ground floors of the building are in lawful use as retail (Class A1).

Recommendation: Approve