

<b>Delegated Report</b>		<b>Analysis sheet</b>		<b>Expiry Date:</b>	04/06/2019
		N/A		<b>Consultation Expiry Date:</b>	N/A
<b>Officer</b>			<b>Application Number(s)</b>		
Adam Greenhalgh			2019/1915/P		
<b>Application Address</b>			<b>Drawing Numbers</b>		
200 Shaftesbury Avenue London WC2H 8JL			See draft decision notice		
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>		
<b>Proposal(s)</b>					
Use as restaurant (Class A3) and hot food takeaway (Class A5).					
<b>Recommendation(s):</b>		Refuse Certificate of Lawfulness			
<b>Application Types:</b>		Certificate of Lawfulness (Existing Use)			

<b>Conditions or Reasons for Refusal:</b>	Refer to draft decision notice			
<b>Informatives:</b>				
<b>Consultations</b>				
<b>Adjoining Occupiers:</b>	No. of responses	<b>0</b>	No. of objections	<b>0</b>
<b>Summary of consultation responses:</b>	No statutory consultation undertaken as not required under the Town and Country Planning Act.			
<b>Covent Garden Community Association</b>	<p>Objection:</p> <p>Our view is that the A5 takeaway use of the premises has been minimal and that only A3 permission should be granted a Certificate of Lawfulness. The Premises Licence for the premises granted in 2006 has a condition (No. 8) that the sale of food for takeaway must cease at 8pm. This, we believe, supports our view that the A5 use has been minimal.</p> <p>Any Certificate should also restrict the use to the hours permitted by the Premises Licence as these are the hours during which the premises has operated over this period. These hours are: Mon – Thurs 10-23:30, Fri &amp; Sat 10:00-00:00 and Sunday 10:00-23:00.</p> <p>CPG Town Centres and Retail states that “New entertainment uses will be allowed only when they have minimal impact on amenity for the local residential population, taking into consideration the cumulative effects”. Grant of a permission which allows the premises to operate any later, or in a different way, to that required by the Licence would result in an impact on amenity, especially an A5 use with later hours than current.</p>			
<b>Site Description</b>				
The application relates to the ground floor and basement of a four storey terraced property at the eastern end of Shaftesbury Avenue (No. 200). The ground floor comprises hot food preparation, selling and eating areas and the basement has further tables and chairs and ancillary areas.				
<b>Relevant History</b>				
2010/2381/P - Installation of new shopfront, canopy and raised timber decking area to existing restaurant (Class A3) – refused 05/07/2010				

## Assessment

- 1.1. Under the Town and Country Planning Act 1990 a land use is immune from enforcement action and can be taken as the lawful use if it can be demonstrated that the use has been in existence continuously for at least ten years prior to the date of an application. National Planning Policy Guidance (NPPG), which was first published in March 2014, advises that if an applicant can present clear and unambiguous evidence, and in the absence of any evidence available to the LPA or presented by others to contradict or otherwise make the applicant's version of events less than probable, then the LPA should issue a Certificate.
- 1.2. It is not considered that irrevocable evidence has been submitted to demonstrate that the premises have been used for a mixed A3/A5 use on a continuous basis for at least ten years prior to the date of the application. The statutory declaration which has been submitted by the current owner of the business includes anecdotal evidence on the current and previous uses which operated during the relevant period and it does not include irrevocable evidence to demonstrate that both entities (i.e. A3 and A5) existed independently of one another and not merely on an ancillary basis. No records of sales or turnover associated with the two uses has been provided. The take-away menu which has been submitted for the premises between 2009 – 2015 (Aziz Mangal) also does not substantiate the amount of the take-away component or indeed, whether it constituted a use in its own right or was merely incidental to the restaurant.
- 1.3. The licence which is in force for the site also points to the two uses not operating independently of each other, i.e. not being mutually exclusive. The licence (PREM-LIC/2840) has a condition whereby the sale of hot food for take-away is limited until 8 p.m. However, the permitted opening hours on the premises licence are: Mon – Thurs 10-23:30, Fri & Sat 10:00-00:00 and Sunday 10:00-23:00. The evidence suggests that a restaurant use operates solely at the premises, and not a mixed use, for substantial periods.
- 1.4. The CGCA consider that the take-away use is minimal and that a Certificate of Lawfulness should not be granted for a mixed restaurant and take-away use.
- 1.5. Finally the only planning history which is available (application 2010/2381/P) has the existing use as a restaurant on the application forms.
- 1.6. In summary, insufficient evidence has been submitted to irrevocably demonstrate that the premises have operated as a mixed A3 restaurant and A5 hot food take-away on a continuous basis for at least ten years prior to the date of the application.
- 1.7. It is therefore recommended that a Certificate of Lawfulness is refused for the existing use of the premises as a mixed A3 (restaurant) and A5 (hot food take-away) use.