

LDC Report		17/01/2020	
Officer		Application Number	
Tony Young		2019/5828/P	
Application Address		Recommendation	
86 Kingsway London WC2B 6AQ		Grant Certificate of Lawfulness (Existing)	
1st Signature		2nd Signature (if refusal)	
Proposal			
Use of ground and basement floors as a café/restaurant (Class A3)			
Assessment			
<p>The application site is a corner premises located on the eastern side of Kingsway at the intersection and junction of Kingsway and Gate Street. The upper floors of the host building comprise of offices. This application relates to the basement and ground floor levels only.</p> <p>The building is not listed but sits within the Kingsway Conservation Area.</p> <p>The application seeks to demonstrate that the basement and ground floor of the premises have been used as a Class A3 restaurant/café for a period of 10 years or more before the date of this application, such that its continued use (within Use Class A3) would not require planning permission.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • Cover letter (ref. JB55813) from Bidwells LLP (agent) dated 15/11/2019, providing background information and attachments (ref. KW1 to KW8) in support of the assertion that the ground and basement floors have been used as restaurant/café (Class A3) since at least 2002; • Email from Renzo Rapacioli (leaseholder of the property from October 2002 to January 2013) dated 15/10/2019 (ref. KW1), asserting that the ground and basement floors have traded as a café with A3 use since 2002; • Extract from the London Borough of Camden website (ref. KW2), showing planning and tables & chairs application records from 2009 to 2019 for no.86 Kingsway; • Extract from the London Borough of Camden website (ref. KW3), showing summary information with regard to planning application 2009/0085/P that refers to an existing A3 (Restaurant and Cafes) use for no.86 Kingsway; • Copy of the London Borough of Camden delegated report for planning (2009/0085/P) and advertisement consent (2009/0086A) applications (ref. KW4), referring to a Class A3 café/takeaway at basement and ground floor levels; 			

- Proposed ground and basement floor drawings (ref. 495.01-201 revision A) dated October 2008 (ref. KW5), showing proposed floor layouts;
- Various customer food reviews (Eataly) dated from 2008 to 2012 (ref. KW6), indicating the type of food on offer at the premises during this period;
- Photographs of menu and internal layout at premises (No Barriers to Food) undated (ref. KW7), indicating the type of food on offer at the premises;
- Letter (ref. KW/P18-2757) from Pegasus Group (previous agent) dated 06/11/2019 (ref. KW8), clarifying that the unit was in Class A3 use prior to the occupation of Chopstix.

The applicant has also submitted the following plans:

- An unnumbered site location plan outlining the application site;
- Ground (ref. 186-001) and basement (unnumbered) floor plans.

Council's Evidence

There is relevant planning history on the subject site:

2018/5920/P - Installation of replacement shopfront, including the relocation of main entrance door and replacement retractable awning. Planning permission granted 30/04/2019. Documentation refers to previous use of ground floor as a 'No Barriers to Food' cafe.

2009/0085/P - Alterations to 2 shopfronts and entrance door to cafe (Class A3 Use). Planning permission granted 17/03/2009. Includes drawings showing 'Eataly' signage and documentation referring to existing café and takeaway use.

2009/0086/A - Display of halo-lit fascia sign lettering to all 3 shopfronts and a retractable awning on the Kingsway elevation. Advertisement consent granted 17/03/2009. Includes drawings showing 'Eataly' signage and documentation referring to existing café and takeaway use.

8900366 - Repositioning of the existing doorway. Planning permission granted 19/09/1989. Approved drawing (ref. RKK-3) shows elevations with 'Dom Vito Sandwich Bar' signage.

There is relevant tables and chairs application history on the subject site:

2019/5169/TC (Knightwalk Restaurant Ltd) - 3 Tables and 6 Chairs, Monday to Saturday 08:00-23:00 Sunday 08:00-22:00. Granted 10/12/2019

2018/5870/TC (Knightwalk Restaurant Ltd) - 3 Tables and 6 Chairs, Monday to Saturday 08:00-23:00 Sunday 08:00-22:00. Granted 07/01/2019

2017/5673/TC (Knightwalk Restaurant Ltd) - 3 Tables and 6 Chairs, Monday to Saturday 08:00-23:00 Sunday 08:00-22:00. Granted 08/01/2018

2016/5163/TC (Knightwalk Restaurant Ltd) - 4 Tables and 8 Chairs, Monday to Saturday 08:00-23:00 Sunday 08:00-22:00. Granted 17/11/2016

2011/3701/TC (Eataly Ltd) - 4 Tables and 16 Chairs: Monday to Sunday: 09:00 to 18:00. Granted 02/09/2011

2010/2293/TC (Eataly Ltd) - 4 Tables and 16 Chairs: Monday to Sunday: 09:00 to 18:00. Granted 21/06/2010

2009/0732/TC (Eataly Ltd) - 4 Tables and 16 Chairs: Monday to Sunday: 09:00 to 18:00.
Granted 06/05/2009

Other information:

The Valuation Office Agency (VOA) records indicate that the premises has operated in cafe use at basement and ground floor levels since at least 01/04/2010.

A site visit to the property was undertaken on 13/01/2020 by the case officer. Though the premises was currently being refurbished internally, the basement and ground floor areas still included kitchen extract ducting, signage and other equipment from the previous occupant which appeared to be consistent with a Class A3 use.

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 (Planning Practise Guidance para. 006), 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 Council does not have any evidence to contradict or undermine the applicant’s version of events. The applicant’s letter, documents and other supporting information indicate that the restaurant/cafe use at ground floor and basement floor levels has been in existence since at least 2002 and has operated continuously as such until the present time. Approved plans, application forms and supporting information from previous planning and tables & chairs applications also support this assertion and indicate that the premise was operating as a restaurant/cafe at ground and basement floor levels throughout this period.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the use at ground and basement floor levels began more than 10 years from the date of this application as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Recommendation: Approve