

2 September 2020
L200902 SAV Cover Letter



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SUBMITTED VIA PLANNING PORTAL PP-09030897

Dear Sir or Madam

**SECTION 191 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
APPLICATION TO CERTIFY EXISTING USE OF THE BUILDING WITHIN CLASS E IS LAWFUL
BRUNSWICK SHOPPING CENTRE, BLOOMSBURY, LONDON, WC1N 1BS
LAZARI PROPERTIES 2 LIMITED**

Introduction

We write on behalf of our client, Lazari Properties 2 Limited, to apply for a Certificate pursuant to Section 191 of the Town and Country Planning Act 1990 (as amended), to certify that the existing use of the Brunswick Shopping Centre in Bloomsbury, London, for use within Class E is lawful.

In accordance with the Town and Country Planning (Development Management Procedure) Order 2015, the application comprises the following:

- This covering letter;
- The completed application form;
- Planning Permission: PSX0104561;
- Statutory Instrument 2020 No 757;
- Drawing Ref: BSC/SLP/2020 – Site Location Plan;
- Drawing Ref: 1564-E02-GA – Existing Level A;
- Drawing Ref: 1564-E02-UB – Existing Upper Basement; and
- Drawing Ref: 1564-E02-LB – Existing Lower Basement.

The planning application has been submitted electronically via the Planning Portal (Ref: PP-09030897), and an online payment for the planning application fee of £462.00 has been made via the Portal.

The application fee adopted is that applicable to a traditional planning application for a change of use which is the most appropriate fee category.

Application Site

The application site comprises the Brunswick Shopping Centre which is located in Bloomsbury in London (the 'Site'). There is pedestrian access to the commercial floorspace at the Site from all of the surrounding streets including: Handel Street, Hunter Street, Bernard Street and Marchmont Street.

Offices and associates throughout the Americas, Europe, Asia Pacific, Africa and the Middle East..

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The building comprises a mix of commercial floorspace which is configured across the Ground (Level A) and Lower Basement Levels. The configuration of the floorspace is illustrated on Drawing Refs: 1564-E02-GA, 1564-E02-UP and 1564-E02-LB.

The full extent of the site is detailed on the submitted Drawing Ref: BSC/SLP/2020 – Site Location Plan.

For clarity, this application does not include the cinema (Ground Floor and Upper and Lower Basements) or residential floorspace which forms part of the upper levels of the Shopping Centre.

Relevant Planning History

On 1 September 2003, planning permission was granted for the: *'Refurbishment of The Brunswick centre; the forward extension of the existing retail units fronting the pedestrian concourse; the creation of a new supermarket (Class A1) across northern end of the pedestrian concourse; creation of new retail units (Class A1) within redundant access stairs to the residential terrace; erection of new structure above Brunswick Square for potential alternative use as retail (Classes A1, A2 and A3), business (Class B1) or as non-residential institutions (Class D1); redesign of the cinema entrance; redesign of existing steps and ramps at the Brunswick Square, Handel Street and Bernard Street entrances, removal of two existing car park entrances at pedestrian concourse level, installation of retail display windows within Bernard Street elevation, redesign of the existing southern car park stairway; replacement of waterproofing layers to the pedestrian concourse and the residential terrace; concrete repair works and introduction of new hard and soft landscaping surfaces and works'* (App Ref: PSX0104561) (the **'2003 Permission'**).

The 2003 Permission provides the primary controls for the commercial floorspace at the Site which is the focus of this application. As set out above, the 2003 Permission allows for use of the floorspace within a range of uses including Classes A1, A2, A3, B1 and D1¹.

The 2003 Permission was granted subject to 22 planning conditions and a legal agreement, made pursuant to Section 106 of the Act, dated 1 September 2003 (the **'2003 Agreement'**). The 2003 Agreement did not impose any ongoing controls on the permitted use of the floorspace.

Lawful Nature of the Existing Development

Section 191(a) of the Act states that an application for a Certificate of Lawfulness of Existing Use or Development should be submitted if *'...any person wishes to ascertain whether...any existing use of buildings or other land is lawful'*.

In this case, the applicant wishes to certify that the established use of the commercial floorspace² at the Brunswick Shopping Centre is now one within Class E and that any operation in that Class is lawful subject to the lasting controls of the 2003 Permission.

On 21 July 2020, Statutory Instrument 2020 No. 757 was laid before parliament by the Government. It comprises a number of changes to the Town and Country Planning (Use Classes) Order 1987 (the **"Use Classes Order"**). The changes outlined within the Statutory Instrument became effective on 1 September 2020.

As set out in the planning history section, the established use of the commercial elements of the Brunswick Shopping Centre were formerly classified within Use Classes A1, A2, A3, B1 and D1 of the Use Classes Order prior to 1 September 2020.

¹ The 2003 Permission only related to physical works to the entrance to the 'cinema' rather than granting specific provision for use of the floorspace within Class D2.

² Excluding the 'cinema' located at Ground and Lower Basement floors which is now within the 'Sui Generis' classification.

Statutory Instrument 2020 No. 757 introduces amendments to the Use Classes Order which seeks to simplify the classification of commercial uses. The effect of the new legislation is to revoke Use Classes A, B1 and D and replace those classes with a new, single classification covering 'Commercial, business and service' uses (Class E).

It follows that the use of all of the commercial floorspace at the Site which is the subject of this application is now correctly described as being within Class E of the Use Classes Order.

The 2003 Permission does not explicitly remove the provisions of the Use Classes Order. As the Local Planning Authority will be aware, moving from one operation to another within the same use classification is not development as defined by Section 55(2)(f) of the Town and Country Planning Act 1990 ('**the Principal Act**'). Section 55(2)(f) of the Principal Act states:

- (2) *The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –*
- (f) *in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.*

The 2003 Permission does include a series of planning conditions which set out clarification and guidance in respect of the permitted uses at the Site. The conditions sought to establish limits on individual uses within separate use classes. The change to the Use Classes Order that has now been enacted renders the provisions within the conditions unenforceable.

It is the applicant's position that only Conditions 4 and 11 continue to have meaning within the new legislative framework and provide an ongoing control. The effect of these two conditions is that:

- a. The floorspace located above the Brunswick Square entrance known as the 'Eye Catcher' shall be not be used for 'business' (formerly Class B1(a)) or 'financial and professional service' (formerly Class A2) uses³; and
- b. Units 36, 38, 40, 42 and 69 cannot be used as a 'restaurant' (formerly Class A3).

It follows that the existing lawful use of the commercial floorspace at the Brunswick Shopping Centre Building is for any operation within Class E of the Use Classes Order subject to continued compliance with Conditions 4 and 11 of the 2003 Permission.

Summary and Conclusion

This application seeks to certify that the existing use of the commercial floorspace⁴ at the Brunswick Shopping Centre in London, for any operation within Class E is lawful.

As set out in this submission, the existing use of the floorspace at the Site was formerly within Classes A1, A2, A3, B1 and D1. The use classification of all of these operations now⁵ falls within Class E of the Use Classes Order.

Critically the 2003 Permission does not explicitly remove the provisions of the Use Class Order. Section 55(2)(f) of the Principal Act is explicit that moving between operations within the same use classification does not constitute development of land. It follows that such operations do not require planning permission.

³ Note that the 'Eye Catcher' floorspace has not yet been developed.

⁴ Excluding the 'cinema' located at ground and lower ground floors which is now within the 'Sui Generis' classification.

⁵ Effective date is from 1 September 2020.



In light of the above, we respectfully request that the Council issues a Certificate, under Section 191 of the Act, to confirm that the use of the floorspace for any purpose within Class E is lawful (subject to compliance with Conditions 4 and 11 of the 2003 Permission.

If you have any queries regarding the above or require any further information in order to be able to issue the certificate, please do not hesitate to contact Tim Price or Ross Fraser.

Yours faithfully,

A handwritten signature in grey ink that reads "Savills".

Savills (UK) Limited
Planning

cc. L Lazari - Lazari Investments Limited
 D Smith - Lazari Investments Limited

Encs.