

Planning Department  
London Borough of Camden  
2nd Floor, 5 Pancras Square  
c/o Town Hall, Judd Street  
London  
WC1H 9JE

29 July 2020

## 80 Fortune Green Road – Certificate of Lawfulness

Dear Sir/Madam,

Wildstone Planning has been instructed by Loretta Mahmud to submit an application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) under Section 191 of the Town and Country Planning Act (1990), in order to establish the use of the property at 80 Fortune Green Road as retail (Use Class A1) on the ground floor and residential (Use Class C3) on the first floors.

### **The Site**

80 Fortune Green Road is located on the northern side of Fortune Green Road and is a three-storey mid terrace building with a ground floor rear projection. The site sits within a neighbourhood centre and falls within the Fortune Green and West Hampstead Neighbourhood Plan Area.

The three storey property was initially formed of ground floor retail (Use Class A1) and residential units (Use Class C3) on the first and second floors. The use of the building has been altered since 1971 when various personal permissions were granted for the use of the ground and part of the first floor for a doctor's surgery (Use Class D1).

### **Background**

The Fortune Green Practice has signed a merger agreement with the West Hampstead Medical Centre. The Practice intends to move out of the premise in the next few months. The landlord is therefore, considering returning the premises to its former retail and residential use in line with the planning permission.

Following a substantial review of the buildings planning history and relevant policy, this indicates that the planning permissions relating to the doctor's surgery use (Class D1) were personal to Dr Mahmud the previous owner of the Practice and building who passed away in 2013. Since his passing the surgery use has been in breach of the relevant planning conditions which granted the consent on a personal basis. A review of the relevant planning history is set out below, to provide clear context and background to the site and evidence as to why a Certificate of Lawfulness should be granted.

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In July 1970 planning permission (application ref. 9358) was granted for the formation of two residential units on the upper floors of No. 80 Fortune Green Road.

The ground floor unit was in lawful use as a showroom and retail unit (Use Class A1), until 1971, when it was granted permission for a limited period of six months, to change the use to a Doctor's Surgery (application ref. 9323 & 10414).

Once the limited permission had lapsed, a further permission (application ref. 11349) was granted in June 1971 for the continued use of the ground floor as a doctor's surgery. This personal planning permission was granted but conditioned to ensure that it related to Dr Salim Mahmud during his occupation only and not the land itself whereby after it would be expected to revert back to its permitted use of retail (Use Class A1). The condition (Condition 1) stated that, *"This permission shall be personal to Dr. Salim Mahmud during his occupation and shall not enure for the benefit of the land, and is in addition to the authorised use of the premises for shop purposes."*

In March 1983, permission was granted for the change of use of the first floor and part of the ground floor from residential to a doctor's surgery use in association with the existing part ground floor surgery (application ref. 35847). The permission also included the erection of an external staircase at the rear. Notably the permission was again conditioned so that it related solely to the use by Dr Mahmud during his occupation after which the land shall revert to the lawful use for residential purposes. The condition (Condition 1) again stated that, *"This permission shall be personal to Dr. Salim Mahmud during his occupation and shall not enure for the benefit of the land, and is in addition to the authorised use of the premises for shop purposes."*

In January 1990, a subsequent application was approved to extend the surgery and provide additional consulting rooms (application ref. 9005063). Whilst reference in this application was not made to the previous personal planning permissions and the condition of limited use under Dr Mahmud, the application refers to and focuses only on the extended area of the building and did not incorporate any changes to the existing building that would be relevant to the existing permissions or use.

In July 1990, an application for a second-floor extension to provide a bedroom for a caretaker's bedsit flat, ancillary to the doctor's surgery use on the ground and first floors, (application ref. 9005670) was approved.

A further application was approved in 2007 regarding a rear extension to the existing flat (Use Class C3) at second floor level and an additional storey to the main building to provide a studio flat, (application ref. 2007/1233P). The officers report did not review the planning history and discussed matters only relevant to the proposals.

In August 2008 an application (ref: 2008/2396P) was approved for the erection of a first floor extension above the existing rear ground floor and change of use of part of the ground floor D1 floorspace to create a first floor studio flat accessed from Rose Mews. No land use objections were received as the loss of D1 was only considered to be small and would not affect the continued use of the surgery below.

An amendment to the above planning permission was approved in March 2012 (application ref. 2012/1219/P), which involved alterations to the roof profile, the cladding and replacement of render on the rear elevation. There was no change of use of D1 (doctors' surgery) at ground floor and installation of external metal staircase from ground to first floor level on rear elevation.

Lastly in 2018 an application was approved for the erection of a recessed additional storey with a terrace to the front of the property to provide additional residential floorspace for the existing flat was approved, (application ref. 2018/0282/P). Whilst it is acknowledged that this now sits under 16 Rose Joan Mews, this is an extension to the 2008 application and forms part of the rear of 80 Fortune Green Road. The application refers to and focuses only on the extended area of the building and did not incorporate any changes to the existing building that would be relevant to the existing permissions or use.

Whilst the extensive planning history sets out the background to the D1 use of the site to date, in 2013 Dr Mahmud, the owner of the site and the individual of whom the personal planning permissions ref. 11349 and ref. 35847 related to, passed away. The surgery has therefore, been operating in breach of these conditions since 2013. As this event occurred in 2013 the required 10-year period has not passed for the Doctor's surgery (Use Class D1) to become an established lawful use. As a result of this and due to the condition imposed (attached to planning permissions ref. 11349 and 35847) the areas shown in these applications should have reverted to Use Class A1 and C3.

It is acknowledged that since part of the surgery has not been reverted to the lawful use as per planning permissions 11349 and 35847, there is currently a breach of planning control and the current tenants have unknowingly been operating unlawfully. Nevertheless, the existing tenants are due to vacate shortly. It is now the applicant's intention to revert to the historic land uses when the current surgery vacates the premises in line with Condition 1 of planning permissions 11347 and 35847.

### **Evidence**

To support this application, the following evidence has been attached:

- Appendix 1: 80 Fortune Green Road Planning History Summary
- Appendix 2: Decision Notice for Application Ref. 9358
- Appendix 3: Decision Notice for Application Ref. 9323
- Appendix 4: Decision Notice for Application Ref. 10414
- Appendix 5: Decision Notice for Application Ref. 11349
- Appendix 6: Decision Notice for Application Ref. 35847
- Appendix 7: Decision Notice for Application Ref. 9005063
- Appendix 8: Decision Notice for Application Ref. 9005670

- Appendix 9: Application Drawings submitted for Application Ref. 9005670
- Appendix 10: Decision Notice for Application Ref. 2007/1233/P
- Appendix 11: Decision Notice for Application Ref. 2008/2396/P
- Appendix 12: Decision Notice for Application Ref. 2012/1219/P
- Appendix 13: Decision Notice for Application Ref. 2018/0282/P
- Appendix 14: Council Tax records relating to Flat Second Floor, 80 Fortune Green Road
- Appendix 15: Council Tax records relating to Flat Third Floor, 80 Fortune Green Road
- Appendix 16: Death Certificate for Dr Salim Mahmud.

### Summary

The evidence presented demonstrates that the lawful use of the property is retail (Use Class A1) on the ground floor and residential (Use Class C3) on first and second floor. Despite having been in use since 1971 as a doctor's surgery (Use Class D1) at ground floor and part of the first floor (since 1983), these uses were granted under "personal" planning permissions, whereby each of the approvals contained a condition stating that should Dr Mahmud (the individual) vacate the premises; the use shall revert to the lawful use for residential purposes.

Furthermore, Section 57(2) of the TCPA 1990 states: *"Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted."*

As the result of the passing of Dr Mahmud, the 'limited period' has lapsed and the lawful D1 uses have in fact ceased. Therefore, it is proposed that the areas shown in these applications should revert to A1 and C3, respectively.

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. Whilst it is acknowledged that the onus is on the applicant to provide sufficient evidence to support the proposed lawful use of the land, co-operation should be received from the local authority should there be any further information regarding the planning status of the land.

In addition to this letter and supporting evidence provided in Appendices 1- 15, we have included the following information in accordance with national validation requirements:

- Completed Application Forms;
- Evidence;
- Site Location Plan (1:1250); (ref. FGF P 10)
- Plans, Elevations and Section, as existing (ref. FGR P 11)

- Plans, Elevations and Section, as proposed (ref. FGF P 12)
- Application fee.

To conclude, based on the evidence submitted with this application a Certificate of Lawful Development should be issued by the Council.

I trust you will find the application to be in order. Please do not hesitate to contact me should you have any questions or require any further information.

Yours sincerely,



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