

LDC (Proposed) Report		Application number	2021/1256/P
Officer		Expiry date	
David Peres Da Costa		12/05/2021	
Application Address		Authorised Officer Signature	
177 Finchley Road London NW3 6LB			
Conservation Area		Article 4	
No		Yes: A1 to A2; Basements; B1a to C3	
Proposal			
Use of basement, lower ground, ground and first floors as a gym (Class E).			
Recommendation:		Grant lawful development certificate	

1. Lawful development certificate application

- 1.1. Section 192 of the Town and Country Planning Act 1990 (“the 1990 Act”) provides for an application to determine whether any proposed use would be lawful for planning purposes. This application is for a determination of fact, and not one of planning merits. The application seeks to determine if use of the site as a gym (Use Class E) would be lawful on the date of the application (17th March 2021). Establishing the current lawful use of the site is the starting point, as use rights for a proposed use stem from that current lawful use.

2. The last lawful use – retail shop

- 2.1. The site comprises a unit that occupies 4 floors (basement, lower ground, ground and first floor), that forms part of a seven storey building known as Chalford House. There is service access to the rear via Fairfax Road. The current building appears to date from the 1950s or 1960s, prior to which the site was occupied by public baths. The unit has been used for various retail activities including as a Sainsbury’s supermarket and as a Woolworths store. It is currently occupied by Iceland.
- 2.2. The submission highlights the planning history for the site as evidence of its retail use.

TP25833/31331: Erection of new central baths and assembly hall and electricity showroom and offices. Grant permission in principle.

TP25833/101065: Revised proposals in connection with the erection of new central baths, and assembly hall and electricity showroom and offices. GRANT PERMISSION in principle under the General Interim Development Order to proceed with the redevelopment of the site of 177, Finchley Road, 1-15, Fairfax Road and 45, Goldhurst Terrace, Hampstead. Granted 15/08/1939

TP25838/13629: The use of the "Lower Gymnasium" and the "Goldhurst Pool" for warehousing, at Central Baths, 177 Finchley Road, Hampstead. Granted 05/06/1964

15739: The installation of a new shop front at No. 177 Finchley Road, N.W.3. Granted 22/03/1973

PW9902014: The replacement of the existing windows with new UPVC windows on the front elevation. Granted 22/02/1999

PW9902199: Installation of a new shopfront. Granted 31/03/1999

2012/1806/P: Alterations to shopfront including replacement of doors in connection with existing retail unit (Class A1). Granted 28/05/2012

2.3. The Council's retail survey corroborates the retail use and demonstrates that the unit was in retail use as Woolworths in 2004-2010, Peacocks in 2011 and Iceland in 2012-2018.

2.4. Section 191(2) says uses and operations are "lawful" if no enforcement action may be taken against them – for example, because a use has occurred continuously for a period of ten years or more. The relevant 10 year period would be the 10 year period ending in March 2021. Given the planning history and evidence from the retail survey, the site would have accrued a lawful use over that period as a Class A1 retail shop.

2.5. Use rights flowing from the lawful use as a retail shop

2.6. On the date of the application (submitted 17th March 2021) the lawful use as a retail shop fell within Use Class E. This use class explicitly includes 'display or retail sale of goods'.

2.7. Section 57 of the 1990 Act states planning permission is required for the carrying out of any development of land. Development is defined by s.55 and includes '*...the making of any material change in the use of any buildings or other land*'. However, s.55(2) sets out operations or uses of land that are **not** taken to involve development. This includes, at paragraph (f), changes of use between uses within the same use class.

2.8. Therefore the change of use to any other use within Use Class E will not constitute development, and thus would be lawful because it would not require planning permission.

2.9. The original planning application for Chalford House, which includes the application site, is missing from the planning records. The submission provides a copy of a Development Order issued by London County Council in 1939 with the reference number 25833/101065. The applicant's cover letter states:

2.10. *"the existing building at the application site is understood to have been developed under the terms of a Development Order granted by London County Council under the Town and Country Planning (General Interim Development) Order 1933 and London Building Act 1930"*

- 2.11. The development order provided by the applicant is identified in the planning history as planning reference 'TP25833/101065' and is "Revised proposals in connection with the erection of new central baths, and assembly hall and electricity showroom and offices". This permission in principle is not considered to relate to the current building on the site as it shows an electricity showroom and offices fronting Finchley Road. Whereas the ordnance survey 60 inch maps dated 1894, 1916, 1935, and the 1250 maps dated 1954 1962 and 1967 all show the site adjacent to Finchley Road occupied by Hampstead Baths prior to redevelopment to provide Chalford House.
- 2.12. Taking into account all the available planning history, none of the permissions introduce any new controls on the use of the application site. As stated above, the decision notice for the redevelopment of the site, to provide Chalford House with retail at basement to first floor, is missing from the Council's planning records.
- 2.13. In these circumstances and on the balance of probabilities, there would not appear to be any restrictions on the normal operation of the Use Classes Order. It is therefore clear that Section 55(2)(f) the Town and Country Planning Act 1990 is applicable in this instance and the use of the existing commercial unit at 177 Finchley Road as a gym within Class E would not constitute development or a material change of use requiring planning permission.
- 2.14. **Conclusion**
- The lawful use of the property is as a retail shop, formerly in Class A1. This use falls within Use Class E and is specified under paragraph (a) of the class. The proposed use as a gym would also fall within Class E, formerly in Class D2, and is specified under paragraph (d) of the class. As the existing use and the proposed use are within the same Use Class, the proposed change of use would not constitute development and so would not require planning permission.
- 2.15. **Recommendation**
- 2.16. Grant Lawful Development Certificate