

Supporting Statement

Application for Certificate of Lawfulness for the use of 5 Harben Parade, Finchley Road, London, NW3 6JR as a gymnasium

1 Introduction

- 1.1 This statement accompanies an application for a Certificate of Lawfulness of proposed use or development submitted on behalf of David (AF) 4 Limited ("the Applicant") to Camden Council ("the Council") and relates to the proposed lawful use of 5 Harben Parade, Finchley Road, London, NW3 6JR ("the Property") as a 24 hour gymnasium (indoor fitness).
- 1.2 The Property is shown edged red on Plan 1 annexed to this statement.
- 1.3 For the reasons set out below, this Application confirms that the Property may be used as a 24 hour gymnasium without implementing the Permission.

2 Factual Background

- 2.1 The Applicant is the leasehold owner of the Property.
- 2.2 The Property's current lawful use is as a retail shop (use class E).
- 2.3 On 20 December 2019, planning permission was granted for the change of use and subdivision of the unit from A1 (retail) to form an A1 (retail) unit and a D2 (gymnasium) at lower ground floor level, with associated alterations to shop front (reference 2019/3270/P) ("the Permission").
- 2.4 Any pre-commencement conditions imposed upon the Permission have not been discharged and the Applicant has not implemented the Permission.

3 Legal Position

Statutory Provisions

- 3.1 Section 55 of the Town and Country Planning Act 1990 ("the Act") (insofar as is relevant) states:

55.— Meaning of "development" and "new development".

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land

(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.”

3.2 Section 57 of the Act (insofar as is relevant) states:

“57.— Planning permission required for development.

(1) Subject to the following provisions of this section, planning permission is required for the carrying out of any development of land.”

3.3 Section 192 of the Act (in so far as relevant) states:

(1) If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(3) A certificate under this section shall –

(a) specify the land to which it relates;

(b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use or operations to be lawful; and

(d) specify the date of the application for the certificate.

(4) the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any matters relevant to determining such lawfulness. “

3.4 Article 3 of the Town and Country Planning (Use Classes) Order 1987 (“Use Classes Order”) (insofar as relevant) states:

"3 – Use Classes

(1)

(1A) *Subject to the provisions of this Order, where a building or other land is situated in England and is used for a purpose of any class specified in –*

(a) *Part B or C of Schedule 1, or*

(b) *Schedule 2,*

the use of that building or that other land, or if specified, the use of part of that building or other land ("part use"), for any other purpose of the same class is not to be taken to involve development of the land"

3.5 Paragraph 1 of Schedule 2 of the Use Classes Order (insofar as relevant) states:

"Class E. Commercial, Business and Service

Use, or part use for all or any of the following purposes –

(a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,

(b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,

(c) for the provision of the following kinds of services principally to visiting members of the public—

(i) financial services,

(ii) professional services (other than health or medical services), or

(iii) any other services which it is appropriate to provide in a commercial, business or service locality,

(d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public"

4 Applicant's Intentions

4.1 Whilst the Permission remains extant and capable of being implemented, the Applicant does not intend to implement the Permission but instead, intends to rely on Article 3 of the Use Classes Order which permits a change of use from the current lawful use as a retail shop to a 24 hour gymnasium.

4.2 The Applicant is not aware of any conditions upon the planning permission for the current use of the property as a shop which would restrict the opening hours of the gymnasium.

- 4.3 The Permission included alterations to the shop front. The design of the shop front has changed since the Permission was granted. The Applicant will therefore apply separately for full planning permission for these works.

5 Discussion

- 5.1 This Application is to confirm that the Property may be used as a 24 hour gymnasium without implementing the Permission.
- 5.2 The Act is clear that a change of use between uses within the same use class is not considered to be development and does not therefore require planning permission.
- 5.3 The current lawful use of the Property is as a retail shop, therefore falling within Class (E) paragraph (a). The proposed use is a 24 hour gymnasium for indoor fitness, therefore falling within Class E paragraphs (a) and (d). Pursuant to s.55(2)(f) of the Act and Article 3 of the Use Classes Order, such a change of use is not considered to be “development” and planning permission is therefore not required.

6 Conclusions

- 6.1 The Applicant is able to use the Property for any use within Use Class E without requiring planning permission. The Applicant does not currently intend to implement the Permission and instead seeks to rely on the provision of the Act and the Use Classes Order to move between uses in Use Class E. Therefore the Certificate of Lawfulness should be granted.

Clarke Willmott LLP

8 June 2021