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L211125 SAV Cover Letter U52



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SUBMITTED VIA PLANNING PORTAL PP-10422644

Dear Sir or Madam

**SECTION 192 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
APPLICATION TO CERTIFY THE PROPOSED USE OF THE BUILDING FOR ANY OPERATION WITHIN
CLASS E IS LAWFUL
UNIT 52, 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 192 of the Town and Country Planning Act 1990 (as amended), to certify that the proposed use of Unit 52 at the Brunswick Shopping Centre for any purpose within Class E is lawful.

The intention is to re-let Unit 52 for an alternative commercial operation within Class E and therefore a certificate will provide certainty prior to the Applicant's investment into the premises. The flexibility created by the introduction of the new Class E will directly facilitate the re-occupation of this unit.

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: 2017/4645/P;
- Drawing Ref: 52BSC/SLP/2021 – Site Location Plan; and
- Drawing Ref: 1564-E02-GA – Existing Level A.

The application has been submitted and the relevant application fee of £231 paid electronically via the Planning Portal (Ref: PP-10422644).

As the application relates to the use of the premises, the application fee adopted is that applicable to a traditional planning application for a change of use which is the most appropriate category. However we would reiterate that no change of use is actually taking place; the application seeks to certify the lawful nature of a proposed use. As the application is made pursuant to s192 of the Act half of the normal fee is due.



The Application Site

The application site is Unit 52 at the Brunswick Shopping Centre which is located in Bloomsbury in London (the 'Site'). Unit 52 is vacant following the cessation of the previous use by 'Fitness Space' on 6 September 2019.

There is pedestrian access to the commercial floorspace at the Site and wider Shopping Centre from all of the surrounding streets including: Handel Street, Hunter Street, Bernard Street and Marchmont Street.

The building comprises a mix of commercial floorspace which is configured across the Ground (Level A) and Lower and Upper Basement Levels.

Unit 52 is situated on the Ground Floor (Level A). The extent of the Site is identified on the submitted Drawing Ref: 52BSC/SLP/2021 – Site Location Plan and on Drawing Ref: 1564-E02-GA – Existing Level A.

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**').

On 25 October 2017, planning permission was granted for: *'Change of use of unit from Bank (Use Class A2) to a Gym (Use Class D2) with ancillary juice bar including the installation of additional air handling plant at sub-basement level and associated internal alterations'* (Ref: 2017/4645/P) ('**2017 Permission**').

The 2017 Permission was granted subject to eight planning conditions. The conditions impose some operational controls (such as hours of operation, playing of music and servicing arrangements). There are no conditions which seek to restrict or limit any future the use of the premises.

There is no other more recent planning application history for the Site based on a review of the Council's online public access system.

It follows that the floorspace at the Site is controlled exclusively by the 2017 Permission. The conditions and limitations imposed on the original 2003 Permission are no longer relevance to the operation of Unit 52.

Lawful Nature of the Proposed Development

Section 192(a) of the Act states that an application for a Certificate of Lawfulness of Proposed Use or Development should be submitted if *'...any person wishes to ascertain whether...any proposed use of buildings or other land is lawful'*.

The Applicant seeks to certify that the proposed use of the floorspace at the Site for any purpose within Class E is lawful.

Unit 52 has been used as a 'gym' in direct accordance with the provisions of the 2017 Permission.

We are not aware of any records of enforcement action in respect of a breach of planning control at the Site.

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 “UCO”). The changes outlined within the Statutory Instrument became effective on 1 September 2020.

As set out above, the floorspace at the Site has been used previously as a ‘gym’ within Class D2 in accordance with the 2017 Permission.

Statutory Instrument 2020 No. 757 introduces amendments to the UCO 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 the floorspace at the Site is now correctly described as being within Class E of the UCO. The fact that the premises was vacant on 31 August 2020¹ is not determinative to its lawful use today or in the future.

The 2017 Permission does not explicitly remove the provisions of the UCO. As the Council 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.*

It follows that there are no operational controls or limitations on the use of the Site and therefore it can be used for any operation within Class E.

As set out above, the conditions imposed on the 2003 Permission are no longer relevant to Unit 52; it is controlled exclusively by the terms of the 2017 Permission. There are no controls or limitation imposed on any future use or cap on any floorspace limits imposed via a formal planning condition.

Summary and Conclusion

This application seeks to certify that the proposed use of the floorspace in Unit 52 of the Brunswick Shopping Centre in London, for any operation within Class E is lawful.

As set out in this submission, the use of the floorspace at the Site was formerly as a ‘gym’ within Class D2. The use of the floorspace now² falls within Class E.

The 2017 Permission does not explicitly remove the provisions of the UCO. 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 and the proposed use of the premises for any operation within Class E is lawful.

¹ The final day before the new UCO became effective.

² Effective date is from 1 September 2020.



In light of the above, we respectfully request that the Council issues a Certificate, under Section 192 of the Act, to confirm that the proposed use of the floorspace for any purpose within Class E is lawful.

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 Heloise Whiteman.

Yours faithfully,

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

Savills (UK) Limited
Planning

Encs.