



7<sup>th</sup> December 2021  
Our Ref: 21.5169

Planning Department  
London Borough of Camden  
Crowndale Centre  
218 Eversholt Street  
Somers Town  
London  
NW1 1BD

24 Southwark Bridge Road  
London  
SE1 9HF

T 0203 268 2018

Dear Sir/Madam,

**Re: Ground Floor and Basement, 23 Rathbone Place, W1T 1HZ**  
**Application for a Certificate of Existing Use of Development (ref: PP-1035574)**

We write on behalf of Lothbury Property Trust Company Limited, to enclose an application for a Certificate of Lawful Existing Use or Development ('CLEUD') in relation to the ground floor and basement unit at 23 Rathbone Place, London ('the Site').

Following changes to The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("the 2020 Regulations") which took effect on 1 September 2020, the Site is now in Class E (Commercial, business and service) use, having formerly being in Class A1 (retail) use and temporary A3 (restaurant) use.

This application seeks a Certificate of Lawful Existing Use to confirm that the use of the Site as a Restaurant is lawful on the basis that whilst the temporary permission for restaurant use from 2015 has lapsed, both the lawful retail use (A1) and unlawful restaurant (A3) use now fall with Class E of the Regulations. This means that planning permission is not required for a change of use to another use within Class E.

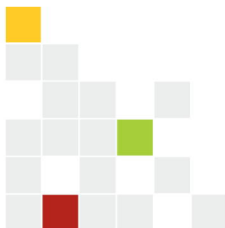
**The Site**

The existing ground floor and basement level of 23 Rathbone Place ('the Site') is located at the corner of Rathbone Place and Gresse Street in Fitzrovia. The Site has two frontages on both Rathbone Place and Gresse Street.

The unit is currently empty but has most recently been occupied by Pisku (a restaurant). Planning permission was granted for temporary Class A3 use in 2015 for two continuous years, but a restaurant use has continued to operate on the site since this temporary permission lapsed. Pisku have unlawfully occupied the unit since 30<sup>th</sup> October 2017 until 23<sup>rd</sup> July 2021.

The Site is not listed but is located within the Charlotte Street Conservation Area. The nearest listed buildings are located at 1, 2 and 3 Percy Street (Grade II).

Camden's Policies Maps designates the Site as a protected primary frontage and within the Fitzrovia Area Action Plan.



Boyer Planning Ltd. Registered Office: Crowthorne House, Nine Mile Ride, Wokingham, Berkshire RG40 3GZ.  
Registered in England No. 2529151. VAT 587443501. Offices at Bristol, Cardiff, Colchester, London, Midlands and Wokingham.

### Certificate of Lawfulness

The statutory framework concerning "lawfulness" for lawful development certificates is set out at sections 191 of the Town and Country Planning Act 1990 ("the 1990 Act"). Under section 191(2) of the 1990 Act, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

Under section 171B of the 1990 Act, the time limit for taking enforcement action against a material change in use, other than change of use to a dwelling house, is 10 years. Therefore, in the context of this application, the 10-year rule would apply.

The local planning authority ('LPA') needs to consider whether, on the basis of the facts of the case and relevant law, the matters specified in the application are lawful. Planning merits are not relevant to the consideration of this application, and the LPA has a duty to issue a certificate if it has been provided with information and evidence satisfying it of the lawfulness of the existing use.

In dealing with this Lawful Development Certificate application, the burden of proof rests with the Applicant, and the standard of proof is on the 'balance of probability'. The NPPG (2014) states that if an LPA has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

### Evidence of Lawfulness

#### 1. Relevant Planning History

The table below provides a summary of the relevant planning application made to Camden Council.

Reference	Proposal	Decision
2015/5476/P	Change of use from retail (Class A1) to restaurant and cafe use (Class A3) for a period of 2 years.	Permitted, 30/10/2015

It is evident that on 30<sup>th</sup> October 2015 the Site was in retail (Class A1) use. The planning history evidence available suggests that the Site changed into restaurant (Class A3) use following this date. Whilst this temporary change of use lapsed in 2017, the Site never reverted back to its original Class A1 retail use. The Council in wrote to Pisu to address this unlawful change of use. On the balance of probabilities it can be asserted that the Site has remained in restaurant (Class A3) use since 2015.

**Boyer**

## 2. Google Maps Street View

This assertion is supported by a submission of series of Google Maps Street View screenshots which show the unit was being used for retail and restaurant purposes which pre-dates the planning history records. The earliest screenshot submitted shows the site to be in retail (Class A1) use since June 2008.

Google Maps Street View (Screenshot date)	Business names and types	Use Class
June 2008	Coffee Republic	A1
July 2012	Espresso Bar-deli	A1
July 2014	Espresso Bar-deli	A1
July 2015	Pisqu	A1
June 2016	Pisqu	A3
March 2017	Pisqu	A3
September 2017	Pisqu	A3
January 2018	Pisqu	A3
April 2018	Pisqu	A3
April 2019	Pisqu	A3
July 2019	Pisqu	A3
November 2020	Pisqu	A3
May 2021	Pisqu	A3

### Summary

It has therefore been demonstrated that in line with statutory framework concerning “lawfulness” for lawful development certificates as set out in the Town and Country Planning Act 1990 (“the 1990 Act”) that the lawful use of the Site is Class E. This is on the basis that Camden Council considered the Site to have a lawful Class A1 planning use in 2015 and subsequently a restaurant A3 planning use from 2015 until 2017. The Site has continued to be unlawfully occupied for Class A3 restaurant purposes since 2017. However this length of time is not sufficient for the change of use to become lawful, meaning that the lawful use has reverted back to Class A1.

Following the recent changes made to the 1987 Use Classes Order, the lawful Class A1 retail use at 23 Rathbone Place automatically transitioned to Use Class E (commercial, business and service) on 1 September 2020. The new Class E includes retail, restaurant, office, financial/professional

**Boyer**

services, indoor sports, medical and nursery uses along with “any other services which it is appropriate to provide in a commercial, business or service locality”.

In dealing with this Lawful Development Certificate application, it is considered the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate which confirms that the lawful use for the Site as after 1 September 2020 is Use Class E (Commercial, business and service) and that the use of the premises for any use within Class E, including retail, restaurant, gym, medical and crèche uses, would be lawful.

#### **Documentation**

On the basis of the above, and in addition to this cover letter, the following documentation is submitted in support of this application for a Lawful Development Certificate:

- Site location plan, Existing Ground Floor Plan and Basement Floor Plan; and
- Google Maps Street View screenshots.

The application fee of £234 has been paid electronically following the submission of this application via the Planning Portal (ref: PP-1035574). We trust you have everything required to proceed with validation, and we look forward to receiving the Certificate at the earliest opportunity.

In the meantime, should you have any queries, please do not hesitate to contact me using the contact details below.

Yours sincerely



**Alexandra Bamford**  
**Planner**

**Tel: 07546406181**

**Email: [AlexandraBamford@boyerplanning.co.uk](mailto:AlexandraBamford@boyerplanning.co.uk)**

**Boyer**