Camden
ENVIRONMENT

**PLANNING SERVICES**

Town and Country Planning Act 1990

# Additional Hearing Statement
## London Borough of Camden

**APPEAL SITE**

The Brunswick Centre, Bloomsbury, London, WC1N 1BS

**APPELLANT**

Lazari Properties 2 Limited

**SUBJECT OF APPEAL**

Non-determination appeal relating to a Lawful Development Certificate submitted on the 2nd September 2020 "*To certify that the existing use of the Brunswick Shopping Centre in Bloomsbury, London for use within Class E is lawful.*'

This additional statement follows the adjournment of the hearing on the 15th March 2022

**COUNCIL REFERENCE:** 2020/3988/P

**PLANNING INSPECTORATE REFERENCE:** APP/X5210/Q/21/3277179

**CONTENTS PAGE**

## 1. Summary of Issues Raised By Inspector

1.1 This appeal relates to the non-determination of a certificate of lawfulness for existing use or development (CLEUD) submitted on the 2nd September 2020 "*To certify that the existing use of the Brunswick Shopping Centre in Bloomsbury, London for use within Class E is lawful.*' The certificate essentially seeks confirmation that the 'shopping centre' can be used for unrestricted Class E following the recent changes made to the Use Class Order.

1.2 The Council would have refused permission had an appeal not been lodged against non-determination.

1.3 This additional hearing statement follows the adjournment of the hearing on 15th March 2022 and a written request from the Inspector on 21st March 2022 for the submission of additional information:

*Dear All,*

1. *This Hearing was adjourned at approximately 4pm on 15 March 2022.*
2. *Prior to the adjournment, it appeared that a line of argument was being developed by the appellant, which does not appear to have been previously set out in the appellant's grounds of appeal. This being the case (and noting that the Council identified prejudice being caused) this line of argument needs to be clearly set out in writing, in advance of the event being reconvened, so that the Council may consider it and respond when the event is reconvened.*
3. *During the Hearing the Council identified units it considers may be operating unlawfully because, for example, they have a significant hot food take away element. Given how existing use rights may be lost, the Inspector wishes to invite written submissions on whether the relevant use of each unit at the date of the LDC application is the permitted use or the use actually being carried out.*
4. *The date for the event being reconvened will inform the date by when any written submissions, pursuant to point 2 and/or 3, must be provided.*
5. *The Inspector is prepared to leave the event as a Hearing provided that any legal submissions are provided in writing.*
6. *The Hearing will be reconvened (a) for each side to respond to legal submissions (without repeating what has already been said), (b) to hear any costs applications and (c) for the site visit.*

*Kind regards*
*Katie Parfrey*
*Enforcement Case Officer, On behalf of the Inspector*

**Point 2: New Line of Argument**

2.1. The Council is grateful for the Inspector's note asking that the Appellant properly set out its case, and will respond in due course when it receives the details.

**Point 3: Existing Use Rights**

3.1. The Council does not repeat its case as set out at the Hearing including as to (1) the on-going effectiveness of Condition 3 for the whole of the centre; and (2) as to individual units, the lack of evidence provided by the Appellant to support their application despite the Council's request for it and the Council's analysis of use on particular units or (3) the Council's evidence from the addendum: '*Hot food takeaways use in the new Use*

*Classes Order*' 19th February 2021, reference the PHE February 2020 Guidance in assisting as to indicating what a hot food takeaway may be; or (4) that even if the Inspector were of the view that a condition was no longer enforceable in relation to a specific unit, it would not follow that all units would benefit from unrestricted Class E, which may apply to Condition 10, rather than to Condition 3.

3.2. If the Inspector would like a further note on any of these points, that can be provided.

3.3. In answer to the specific question asked as to the scope of existing use rights, the Council considers that the Appellant's case on this point is not clear.

3.4. However:

(1) The legal test that the Appellant must meet in relation to a potential case based on preserving the existing use rights of an individual unit of the Brunswick Centre is
   a. at s.191(2) of the Town and Country Planning Act 1990 (see paragraph 5.4 of the Council's Written Statement)
   b. in relation to when immunity is gained, at s.171B (Time Limits) (save for example in cases involving concealment). S.171B(3) provides 10 years from the date of breach for a change of use.

(2) The application before the Inspector was made on the basis that "*the existing use of the premises for any purpose within Class E is lawful as changes within the same Class is not development as defined by Section 55 (2)(f) of the Act". See* application for a lawful development certificate (Box 6) and cover letter.

(3) Lawfulness is referable to the date the application is made, see s.191(4)

   *If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.*

(4) The existing use at the date of the application is thus the material starting point. A different application could be required for different dates. However, under s.191(2), in principle (and in summary), an Appellant can seek to rely on any consecutive period of time in which there has not been a material interruption, usually 10 years for a change of use. This is not understood to be the Appellant's case, but if it was the Appellant's case, the 10 year point can in principle move forwards (or backwards) from the date of application in a case such as this one, as this is not a situation where there is currently an enforcement notice in force (s.191(2)(2) TCPA 1990). A different application may be required. In some cases there may also require to be assessment of whether there had been deliberate concealment.

(5) The only evidence put forward by the Appellant has essentially been a schedule of units and uses on August 31st with a signed statutory declaration from Leonidas Lazari (Appellant's Appendix 8), no detailed information accompanying, a tenancy history timeline 2010-2020 with no detailed information as to the nature of the use(s) (Appellant's Appendix 9) and Camden's snapshot retail survey (Appellant's Appendix 10).

(6) Even if the Appellant were to satisfy a 10 year period in relation to the use of a particular unit, that does not mean that Condition 3 would not have been complied with (which provides that "*up to a maximum of 40% of the retail floorspace…is permitted to be used within Use Classes A2 and A3…"*) so necessarily requires wider appraisal, although it may mean that Condition 10 may not be enforceable. Plainly the whole of the 2003 consent is not rendered unenforceable because of breach of an element in an area, but would require appraisal to understand the extent of any particular existing use right.

3.5. This is referred to at various points in the Council's Written Representation Statement. The Council would particularly refer to paragraphs 5.17 – 5.18:

> *5.17. These details would have been able to be reviewed and addressed if the applicant had provided when requested a short planning history for each unit with documentary evidence to corroborate the use over the past 10 years, as is quite usual in CLEUD applications.*
>
> *5.18. The Appellant asserts at 3.13 and 3.14 that this evidence is only required if its being asserted that a use has become lawful because of the passage of time over 10 years, and thus asserts that it is not required in this case, and then continues "The above is particularly the case given that there has been no assertion by the Council, let alone any evidence, that any of the units have been operating in breach of the 2003 Permission". The Council sought evidence in order to assess it, however the Appellant has declined to provide such evidence, which can be expected to be available, and the evidence which has been provided is not consistent with evidence known to the Council. The Council disagrees with the analysis. There is disagreement over Condition 3. The evidence of the use over time is material to the statutory test for a CLEUD in this case for a variety of reasons, given the scope of the application 0 in particular some units may be in a particular use that fell outside Reg 3(7) of 2020 No.757, they may not be lawfully be in new Class E, they may or may not be immune from enforcement action because of the passage of time for any number of reasons, there may have been a material breach of other conditions, etc. The Council is entitled to ask for the evidence in this case given the information known to the Council and the ambiguity and lack of clarity in the case.*

3.6. Overall, the Council considers that there is insufficient evidence to confirm for the purposes of the certificate application as sought:

(1) Either that all the units were currently lawfully operating within a use that on 1st September 2020 would automatically become Class E, those being Class A1 (shops), A2 (financial and professional services, A3 (restaurants and cafes) or Class B1 (business);

(2) or indeed that the same can be said of the situation currently today (although that has not been the focus of the Appellant's case, so it is not properly understood).

3.7. As was outlined in the Council's Hearing Statement and at the Hearing it is highly likely that some uses were operating as a mixed use (Sui Generis) or a use which falls outside those use classes such as A5 (hot food takeaway). In other cases it is clearly more likely than not. In some cases the primary evidence on site is for example the clear Deliveroo point. In all cases it appears the Appellant has not put material information forward, and where the Council has other evidence from its own knowledge, and where the evidence the Council expects and would usually see in certificate cases and can be expected to exist has not been put forward. The Council did seek that the appellant provide evidence of use of the units to support their argument. The appellant, despite requests, has not provided adequate evidence to make this assessment.

3.8. The Council reserves it right to respond further to anything submitted by the appellants.