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| <b>LDC (Existing) Report</b>                      |  | <b>Application number</b>                   | 2021/5765/P |
| <b>Officer</b>                                    |  | <b>Expiry date</b>                          |             |
| Gary Bakall                                       |  | 19/01/2022                                  |             |
| <b>Application Address</b>                        |  | <b>Authorised Officer Signature</b>         |             |
| Unit 52<br>Brunswick Centre<br>London<br>WC1N 1BS |  |   |             |
| <b>Conservation Area</b>                          |  | <b>Article 4</b>                            |             |
| Bloomsbury  |  | no  |             |
| <b>Proposal</b>                                   |  |   |             |
| Use of Unit 52 for any operation within Class E   |  |   |             |
| <b>Recommendation:</b>                            |  | <b>Grant lawful development certificate</b> |             |

### Site Description

The site is a retail unit within the Brunswick Shopping Centre which is a landmark building located within the heart of Bloomsbury bounded by Marchmont Street on the east, Brunswick Square on the west, Bernard Street on the south and Handel on the north. It is a Grade II listed building containing two linked blocks of 560 flats above an open shopping centre of 40 units and supermarket on raised ground floor over a basement containing car parking, servicing and a cinema.

### Proposal

1.1 The application is for a Certificate of Lawfulness (existing) to show that Unit 52, which had planning permission to operate as a gym within Class D2, can be used for any use within Class E.

1.2 On 1st September 2020 the T&CP (Use Classes) Amendment (England) Regulations 2020 came into effect. This introduced amendments to the Use Class Order (UCO) that seeks to simplify the classification of commercial uses, eliminating the materiality of many changes of uses by revoking Use Classes A, B1 and D and replacing them with a new classification covering commercial, business and service uses (Class E). Class E includes:

- **E(a)** Display or retail sale of goods, other than hot food
- **E(b)** Sale of food and drink for consumption (mostly) on the premises
- **E(c)** Provision of:
  - **E(c)(i)** Financial services,
  - **E(c)(ii)** Professional services (other than health or medical services), or
  - **E(c)(iii)** Other appropriate services in a commercial, business or service locality

- **E(d)** Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink,)
- **E(e)** Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)
- **E(f)** Creche, day nursery or day centre (not including a residential use)
- **E(g)** Uses which can be carried out in a residential area without detriment to its amenity:
  - **E(g)(i)** Offices to carry out any operational or administrative functions,
  - **E(g)(ii)** Research and development of products or processes
  - **E(g)(iii)** Industrial processes

A gym would fall within the new Class E(d).

### Relevant Planning History

- 1.3 Although the centre was completed in the 1970s it underwent a full refurbishment following approval of works in 2003.
- 1.4 On the 1<sup>st</sup> September 2003 planning permission PSX0104561 (the 2003 Permission) was granted for; *'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.'* This planning consent had a number of conditions attached, some of which sought to control the use and operation of the commercial units and to restrict the amount of non-retail use to 40% of the floor area of the centre (less the Supermarket).
- 1.5 On the 25<sup>th</sup> October 2017 planning permission 2017/4645/P was granted for; *'Change of use of (Unit 52) 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'*. This planning consent had a number of different planning conditions to the 2003 permission to control the use and operation of this commercial unit, including hours of operation, approval of details for sound insulation, no music audible outside unit, noise levels from plant, and anti-vibration measures for the training equipment, plus condition 8 which required all servicing for this unit be from the basement- this condition is the only condition the same as the 2003 Permission.

### Assessment

- 1.6 This application seeks to determine under s192 of the T&CPA 1990 whether use of this shop unit as Class E is lawful. The evidence submitted has to be sufficiently clear, precise and unambiguous to show on the balance of

probabilities that 2017/4645 was lawfully implemented. The applicants have submitted a covering letter that outlines the legalities and the planning history, a plan showing the unit within the centre, a copy of the decision notice for 2017/4645, an extract of the lease for Fitness Space at this unit dated 17<sup>th</sup> November 2017, a photo supplement showing Fitness Space operating as a gym from the premises between June 2018 and July 2019 and details of the voluntary liquidation of Fitness First in November 2019 (the unit has since been vacant with no subsequent planning permissions).

- 1.7 Historically a change of use from D2/assembly and leisure to any other use would require full planning permission but since the T&CP (Use Classes) Amendment (England) Regulations 2020 came into effect on 1<sup>st</sup> September 2020, including D2 use classes into Class E(d), they have been able to change use to any other use within the larger E use class (see above).
- 1.8 While In this case the larger Brunswick Centre has a number of planning conditions on PSX0104561 that sought to restrict the amount of non-retail floorspace in the centre as a whole, this did not include D2 uses and when unit 52 received a separate planning consent to operate as D2, these conditions were not carried over and so this unit would not be subject to these restrictions limiting the amount of retail and non-retail.
- 1.9 Two conditions 4 & 7 are pre commencement conditions that have not been discharged-

*4. Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of the sound insulation of the floor/ ceiling/ walls separating the commercial parts of the premises from noise sensitive premises. Details shall demonstrate that the sound insulation value  $D_{nT,w}$  and  $L'_{nT,w}$  is enhanced by at least 10dB above the Building Regulations value and, where necessary, additional mitigation measures are implemented to contain commercial noise within the commercial premises and to achieve the criteria of BS8233:2014 within the dwellings/ noise sensitive premises.*

*The details as approved shall be implemented prior to occupation of the development and thereafter be permanently retained.*

*7. Before the use commences, all training/gym machinery shall be provided with anti-vibration measures in accordance with the scheme approved in writing by the local planning authority. All such measures shall thereafter be retained and maintained in accordance with the manufacturers' recommendations.*

Officers have taken legal advice on this matter and, although failure to comply with certain 'condition precedent' pre-commencement planning conditions can invalidate the implementation of a planning permission, condition precedents need to go the heart of that permission and it is considered that in enforcing this condition the Council would not require the gym to close down but to comply with the condition. Details concerning the sound insulation and anti-vibration measures were submitted with the application for 2017/4645 and no complaints about noise were received while the gym operated. In this respect it is considered that the permission was lawfully implemented despite the failure to formally discharge these two conditions.

## Conclusion

The evidence supplied by the applicant is considered sufficiently precise, clear and unambiguous to prove on the balance of probabilities that planning permission 2017/4645 was lawfully implemented. The use of Unit 52 was still lawfully D2 on 1<sup>st</sup> September 2020 when the Use Classes was amended to allow D2 use to change within the new E use class. There are no conditions on 2017/4635 affecting future operation of this unit beside condition 8 which will be added to the certificate. Accordingly a certificate can be granted to confirm the unit can be used lawfully now within Class E.