

<b>LDC (Proposed) Report</b>		<b>Application number</b>	2022/4999/P
<b>Officer</b>		<b>Expiry date</b>	
Daren Zuk		10/01/2023	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
Ground Floor 227 Brecknock Rd London Camden N19 5AA			
<b>Conservation Area</b>		<b>Article 4</b>	
N/A		Basements E to C3	
<b>Proposal</b>			
Use of the ground floor as a nail / beauty salon (Class E) with service rooms and ancillary storage.			
<b>Recommendation:</b>		Grant approval.	

## 1. Site Description

1.1 The building comprises a three-storey (plus loft) terrace with a vacant ground-floor commercial unit, previously used as a restaurant. This is a Class E use under the Town and Country (Use Classes Order). The neighbouring properties mostly consist of commercial occupiers at ground floor level, with residential accommodation (Use Class C3) on the upper floors.

## 2. Relevant History

**8501159** – Change of use of ground floor shop to shop for the sale of hot food. As shown in drawing 857.13. – **Granted 19/09/1985**

**8580243** – Display of one internally illuminated shop fascia sign (measuring 3.65m x 0.75m high) and the relocation of the existing internally-illuminated projecting box sign as shown on drawing no. 8602.20 and as revised on 6<sup>th</sup> February 1986. – **Granted 05/03/1986**

**8600245** – Installation of new shopfront as shown on drawing nos. 8510.19.1 and 2. – **Granted 05/03/1986**

## 3. Proposal

3.1 The proposal is for the use as a nail / beauty salon occupying the ground floor, with service rooms and ancillary storage at the rear. A certificate of lawfulness for proposed development has been submitted to establish whether the use, which falls under Class E (commercial, business, and service use) would be lawful.

## 4. Assessment

- 4.1 Section 192 of the Town and Country Planning Act 1990 provides for an application to determine whether any proposed use or operations would be lawful for planning purposes. This application seeks to determine if the use as a nail/beauty salon with service rooms and ancillary storage would be lawful.
- 4.2 The existing use falls within Class E. This can be confirmed by business rates records which identify the application site as 'café and premises' since at least 2010. Historical Google Street View images show the site as a restaurant since at least 2011. The site's planning history also indicates the site was in use as a restaurant since 1985.
- 4.3 The planning history does not include any conditions which restrict the use of the premises, or exclude the use from any use within Class E.
- 4.4 In *Rugby Football Union [2002] EWCA Civ 1169*, the Courts determined that if a landowner wishes to rely on the Use Classes Order, the burden of proof must be on them to show that the Use comes within the Order. In accordance with this requirement the applicant has provided a description of the nail/beauty salon and its activities.
- 4.5 The salon would have a retail offering to the ground floor and would therefore retain a retail function. At this site the services available would be visible through the shopfront window which would encourage visits from members of the public.
- 4.6 Nail/beauty salons typically serve members of the public who can walk in off the street whilst they may also operate a booking system for appointments. Customers do not have to pre-book and can enter the unit from the street both to view the services that can be offered. The nail/beauty salon would therefore operate both as a walk-in and appointment-based service, which is a use commonly associated with a town centre. The unit would retain the vitality and viability of the Fortress Road Neighbourhood Centre.
- 4.7 In terms of general consideration as to what use class applies to any particular activity, in *Forkhurst v Secretary of State for the Environment (1982) 46 P & CR 89*, the Court outlined four steps to be taken in deciding whether a use comes within a particular use class:
- formulate an accurate description of the actual use
  - see as a matter of construction whether that description fits into a use class
  - determine whether the description includes activities that fit into more than one use class, and
  - when there are activities that fall into more than one use class, determine whether one is ordinarily incidental to the other
- 4.8 Prior to the amendments to the Use Classes Order on 1st September 2020 the local planning authority (LPA) and many other LPAs and PINS have treated nail/beauty salons as *Sui Generis*. This may have been primarily because nail/beauty salons did not fit under the previous Class A1 definition of "Shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices, pet shops, sandwich bars, showrooms, domestic hire shops, dry cleaners, funeral directors and internet cafes".

4.9 However, the new definition of Class E - "E(c)(iii) - Other appropriate services in a commercial, business or service locality" allows for a broader range of uses or activities to fall within the classification of 'services' in a 'commercial, business or service locality'. The new Use Class Order has identified certain uses that are Sui Generis and nail/beauty salons are not identified amongst them. Based on the proposed activities described above, the nail/beauty salon would therefore fall within Class E. The Council consider that nail/beauty salon would fall within Class E as it is an appropriate service to be found in a commercial, business or service locality.

4.10 The NPPG confirms that 'Movement from one primary use to another within the same use class is not development and does not require planning permission.' The change from restaurant to nail salon would not represent a change of use and therefore would not constitute development which would require planning permission.

## **5. Recommendations:**

5.1. Approve Certificate of Lawfulness