

Officer's Report

Application Number	HGY/2023/1144
Type	Lawful development: Proposed use
Location	Old BHS Store (side entrance is adjacent to 24a), Whymark Avenue, London N22 6DJ
Proposal	Certificate of lawfulness for the change of use of the first floor of the building from retail to restaurant use (within Use Class E).
Case Officer	Zara Seelig
Valid Date	26/04/2023
Applicant	Mr REGAL HOUSEWARES LTD
Agent	Mr Jamie Sleep

RECOMMENDATION

Permitted Development

RECOMMENDATION

GRANT CERTIFICATE

RELEVANT PLANNING AND ENFORCEMENT HISTORY

None

DETAILS OF PROPOSAL

This is an application for a certificate of lawfulness for the conversion of the first floor of the premises from Class E (Retail) to Class E (Restaurant).

RELEVANT PLANNING LEGISLATION

The application has been made under section 192 of the Town and Country Planning Act 1990 and relevant amendments. This is not a planning application but instead the applicant seeks confirmation that the proposed development is lawful. As such, the impact of the proposed development on the neighbour's amenities or the character of the area cannot be taken into consideration for this submission.

ANALYSIS/ASSESSMENT OF THE APPLICATION

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 amended the Town and Country Planning (Use Classes) Order 1987, introducing the new Use Class E. This brought a number of uses that were previously in separate use classes into a single use class covering 'all services which it is appropriate to provide in a commercial, business or service locality', including shops (except some local under Use Class F2) and cafés/restaurants.

A proposed use will be lawful if, among other things, it does not amount to 'development' within the meaning of section 55 of the 1990 Act, since in those circumstances permission will not be required by virtue of section 57 of the Act.

Section 55(2) of the Act provides: '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;'

The relevant order is the Town and Country Planning (Use Classes) Order 1987 (as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020).

Article 3(1) of the Use Class Order provides that;

Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land. As the existing use of the application site for retail purposes and its proposed use as a restaurant both fall with the same Use Class (E), the change of use is therefore not considered 'development' within the meaning of section 55 of the 1990 Act. As such a certificate of lawfulness can be issued for the proposal.

CIL APPLICABLE

The increase in internal floor area would not exceed 100sqm and therefore the proposal is not liable for the Major's CIL charge.

SUMMARY AND CONCLUSION

The proposed development is lawful as set out above.

RECOMMENDATION

Grant Certificate

In pursuance of their powers under the above Acts and Order the London Borough of Haringey as local planning Authority hereby CERTIFY that the above proposal described by the applicant constitutes PERMITTED DEVELOPMENT and is therefore LAWFUL.