

06 March 2024

Submitted via Planning Portal

London Borough of Haringey
Level 6
River Park House
Wood Green
London
N22 8HQ

Planning Portal Ref: **PP-12725572**

Dear Sir/Madam,

UNIT 11C, WOOD GREEN SHOPPING CITY, HIGH ROAD, LONDON, N22 6HE

APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF PROPOSED USE – SECTION 192 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) - PP-12725572

We submit an application on behalf of The Mall Limited Partnership ("the Applicant") for a Certificate of Lawfulness of proposed use¹ (CLOPUD) within Wood Green Shopping City ("the application site") to formally confirm the proposed use as gym (Use Class E(d)) that will occupy Unit 11C of the shopping centre above is lawful.

At the heart of the Wood Green High Street, this will support the regeneration of the area through provision of long-term investment in the Shopping Mall, diversifying the service offer in the Town Centre, and delivering a significant and diversified footfall to the area.

This letter explains why the proposed gym (Use Class E(d)) use at the site is lawful and does not require planning permission, and thus that the CLOPUD should be granted. The application has been submitted via the Planning Portal (ref. PP-12725572) and comprises this letter and the following:

- A suite of Existing and Proposed Plans and Drawings, prepared by HFM Architecture and Project Management:
- 3432H-P-E001 - Site Location Plan;
- 3432H-P-E099 – Existing Basement Plan
- 3432H-P-E100 - Existing Ground Floor Plan;

¹ Pursuant to s192 of the Town and Country Planning Act 1990

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- 3432H-P-A099 – Proposed Basement Plan;
- 3432H-P-A100 – Proposed Ground Floor Plan;
- The statutory application fee of £289, plus £64.00 admin fee, paid via Planning Portal at submission.

THE APPLICATION SITE

The Mall is located in the centre of Wood Green, having first opened in 1981. Units 11C falls within the designated Wood Green Primary Shopping Area, Wood Green District Centre, Wood Green Growth Area and the Mall Strategic Site Allocation; and forms part of the Primary Shopping Frontage. The wider shopping centre building is not listed, is not in close proximity to any listed buildings, and does not fall within a conservation area.

The existing building is three to four storeys in height where the site is located, with the shopping centre uses occupying the first and second storeys with the upper storeys used for ancillary functions. On the opposite side of High Road are the continuation of Retail functions that line both sides of the road, however the unit itself is fronted by Units 11 and 11B. As such, access to the site is possible via the main mall entrance approximately 10-15m further north.

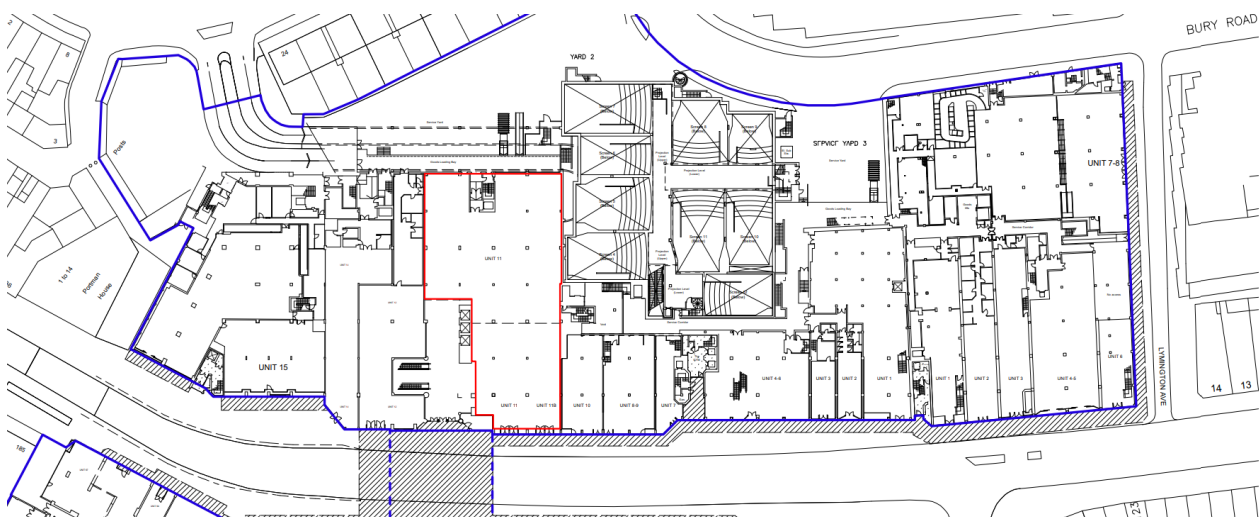


Figure 1: Site and the surrounding area (Site Location Plan, prepared by HFM Architecture and Project Management)

RELEVANT LEGISLATION

The key pieces of legislation relevant to this certificate of lawfulness of proposed development is identified as follows (our emphasis):

Section 192 of the Town and Country Planning Act (as amended)

Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land.

Would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(3) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use or operations to be lawful; and

(d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Revocation, transitional, savings and consequential provision

2. In relation to England—

(a) Parts A and D of the Schedule to the Use Classes Order are revoked, and

(b) Part B of that Schedule is modified by regulation 10(3),

save to the extent required to give effect to regulations 3 and 4...

7. For the purposes of the Use Classes Order, if a building or other land is situated in England, and is being used for the purpose of one of the following classes which were specified in Part A or B of the Schedule to that Order on 31st August 2020, as—

(a) Class A1 (Shops),

(b) Class A2 (Financial and professional services),

(c) Class A3 (Restaurants and cafes), or

(d) Class B1 (Business),

that building or other land is to be treated, on or after 1st September 2020, as if it is being used for a purpose specified within Class E (Commercial, business and service) in Schedule 2 to that Order.

Amendments to the Use Classes Order

8. The Use Classes Order is amended in accordance with regulations 9 to 13.

9. In article 2 (Interpretation) omit the definition for “Schedule”.

10. —(1) In article 3 (Use Classes)—

(2) In paragraph (1)—

(a) after “where a building or other land” insert “is situated in Wales and”,

(b) for “the Schedule” substitute “Schedule 1”, and

(c) for “shall not” substitute “is not to”.

(3) After paragraph (1) insert—

“(1A) Subject to the provisions of this Order, where a building or other land is situated in England and is used for a purpose of any class specified in—

(a) Part B or C of Schedule 1, or

(b) Schedule 2,

the use of that building or that other land, or if specified, the use of part of that building or the other land (“part use”), for any other purpose of the same class is not to be taken to involve development of the land.

(1B) Part B of Schedule 1 applies to a building or other land that is situated in England subject to the modifications set out in paragraph (1C).

(1C) Part B of Schedule 1 applies to a building or other land that is situated in England as if—

(a) Class B1 (Business) were omitted, and

(b) for Class B2 (General industrial) there were substituted—

Schedule 2 Part A Class E Commercial, Business and Service

Use, or part use, for all or any of the following purposes—

(a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,

(b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,

(c) for the provision of the following kinds of services principally to visiting members of the public—

(i) financial services,

(ii) professional services (other than health or medical services), or

(iii) any other services which it is appropriate to provide in a commercial, business or service locality,

(d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,

(e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,

(f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

(g) for—

(i) an office to carry out any operational or administrative functions,

(ii) the research and development of products or processes, or

(iii) any industrial process,

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Guidance Concerning the Determination of Lawful Development Certificates

Paragraph 005 of the Planning Practice Guidance ('PPG') on Lawful Development Certificates notes that the requisite contents of an application, and of the submission process, are set out in Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Accordingly, this application has been made in the prescribed form and is accompanied by the necessary fee together with:

(a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;

(b) such evidence verifying the information included in the application as the applicant can provide; and

(c) a statement setting out the applicant's interest in the land, the name and address of any other person known by the applicant to have an interest in the land, and whether any such other person has been notified of the application.

Paragraph 006 of the PPG confirms that it is the responsibility of the applicant to provide sufficient information to support an application. It adds that the appropriate test is whether, "*on the balance of probabilities,*" the proposed use or development would be lawful.

Section 55(1) of the Town and Country Planning Act 1990 (as amended)

Meaning of "Development" and "New Development"

Section 55(1) of the Town and Country Planning Act 1990 (as amended) establishes that:

"...[D]evelopment means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

The Act further specifies at Sections 55(2)(f) that:

"(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."

In summary, as set out under the above legislation context:

- As from 1st September 2020, both former use class A1 (retail) and D2 (Assembly and Leisure) have been revoked and instead fall under the new same use Class E.

- Changes of use within this new Class E does not constitute development.
- The carrying out of works that only effect the interior of a building, are not structural and do not materially impact the external appearance of a building does not constitute development.
- Section 192 of the Town and Country Planning Act allows for local authorities to provide certificates of lawful development for a proposed use where it is demonstrated the proposed use is lawful.

PROPOSED LAWFUL USE

The proposals entail the conversion of Unit 11C (circa 715sqm of floorspace) within the shopping centre from Class E retail to indoor facility falling under Use Class E(d) (Indoor sport, recreation or fitness)) for the use as a gym.

As per Section 10(3)(1C) of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, changes of use within the new Class E does not constitute development and therefore planning permission should not be required.

An exception to this flexibility would be if there is a clear restrictive planning condition in place limiting changes between uses relevant to the unit or the entire shopping centre. However, as confirmed by the officer's report for application ref. HGY/2021/3170 it is understood this is not the case for the shopping centre.

Consequently, in the absence of any existing restrictive planning conditions on this use, the provisions of Article 3(1) of the Town and Country Planning (Use Classes) Order 1987 (as amended) are considered to apply. This means that the proposed use of the site for the full range of Class E uses – that is, Classes E(a)-(g) – would not represent a material change of use or, in turn, development as per Section 55 of the Town and Country Planning Act (1990) (As amended).

In terms of proposed works to create the unit, it will not entail any external or structural alterations to the existing building. As such, the works will not entail material operations that constitute development, as per Section 55 of the Town and Country Planning Act (1990) (As amended).

Section 192 of the Town and Country Planning Act (as amended) allows for such uses and works to be regularised through the submission of a Certificate of Lawful Proposed Use. For avoidance of doubt, the assessment for determining a CLOPUD rests only on the above-mentioned tests as a matter of fact and degree. Planning merits or compliance with the development plan are not relevant and cannot be considered.

The available evidence demonstrates that the site has an existing lawful Class E use as retail unit to a shopping centre that has existed since 1981, with no planning conditions restricting its use within Class E (as confirmed). The proposed use as a gym also falls within a Class E use. Therefore, in accordance with Section 55 of the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, the proposed use and works do not constitute development. As such, in accordance with Section 192 of the Town and Country Planning Act (as amended) a Certificate of Lawful Proposed Use and Development is requested to be granted.

Summary

On behalf of our client, The Mall Limited Partnership, we hereby submit a request for a Certificate of Lawfulness of Proposed Use under Section 192(1) of the Town and Country Planning Act 1990 (as amended) to confirm that the proposed use as gym (Use Class E(d)) that will occupy Unit 11C of the shopping centre above is lawful.

It is considered that it is sufficiently precise and unambiguous to demonstrate that the proposed gym (Use Class E(d)) use of the site would not, on the balance of probabilities, involve development which requires planning permission under Section 55 of the Town and Country Planning Act 1990 (as amended). Accordingly, we respectfully request that

a Certificate of Lawfulness of Proposed Use is granted to verify that the proposed use of the site is lawful for planning purposes.

We trust the enclosed provides you with adequate information to progress and validate the application. We are looking forward to continuing our positive discussions with you during the determination period, but if you require any further information or clarifications at this stage, please contact Jordan Bishop (Jordan.Bishop@turley.co.uk) or myself in the first instance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Luke Sumnall', written in a cursive style.

Luke Sumnall
Senior Planner

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