

Planning
London Borough of Barnet
2 Bristol Avenue
Colindale
London
NW9 4EW

11 May 2022

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990: APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR A PROPOSED USE OR DEVELOPMENT – 34 HENRY ROAD, NEW BARNET, LONDON, EN4 8BD

We write on behalf of our client, Jacuan Kitchens (*“the Applicant”*), to apply for a Certificate of Lawfulness for a Proposed Use or Development (*“the Application”*) to confirm that the proposed use of part of 34 Henry Road (*“the Site”*) as a ‘professional delivery kitchen’ (Use Class E(g)(iii)) is lawful in accordance with planning permission ref: 19/4282/FUL.

THE APPLICATION SITE AND RELEVANT PLANNING HISTORY

The Site comprises part of 34 Henry Road, which is located on the corner of Henry Road and Lancaster Road (see **Figure 1** below). 34 Henry Road comprises a two storey office building, with a surface level car park to the north. Planning permission has been granted (see *Relevant Planning History* below) and development commenced to construct a five storey linked extension to the existing building, together with the creation of two additional storeys above the existing building to provide flexible Class B1(a-c) (now Class E(g)) floorspace.



Figure 1: Indicative Site Location Plan (Google Maps)

This Application relates specifically to the rear part of 34 Henry Road (“the Site”), comprising the new side extension measuring circa 604 sqm, which is currently under construction (see **Figure 2** below).

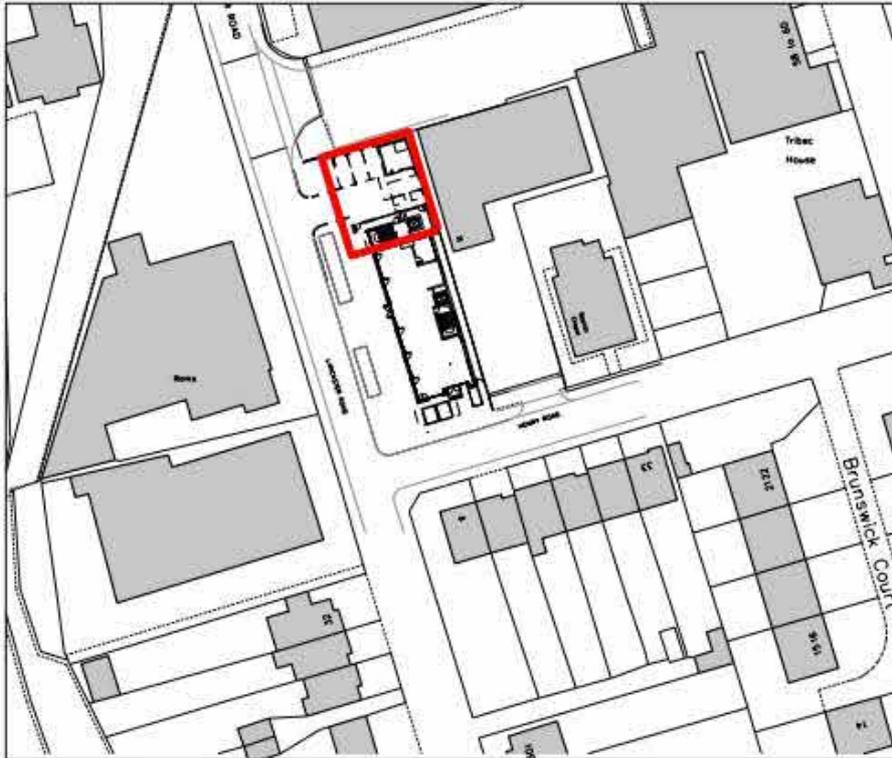


Figure 2: Area of 34 Henry Road subject to application

The Site is located within the Lancaster Road Industrial Site, which is a designated Locally Significant Industrial Site (LSIS). Other industrial / commercial properties are located to the north, east and west of the Site, whilst two storey residential properties are located to the south of the Site on the southern side of Henry Road and a series of three-four storey blocks of flats are located to the northwest. A place of worship is located immediately to the east of the Site.

Relevant Planning History

On 13 May 2020, planning permission was granted for the “erection of five storey linked extension to the existing two storey building, including new staircase and lift, and the creation of two additional stories above the existing building to provide additional flexible Class B1 a-c floor space and external alterations to the existing building.” (ref: 19/4282/FUL).

The above planning permission granted the creation of 849 sqm (GIA) of flexible Class B1 (now Class E(g)) floorspace, in addition to the existing 440 sqm of Class B1 (now Class E(g)) floorspace. The permitted side extension comprises four floors of accommodation constructed of pre-fabricated containers with undercroft parking (5 no. spaces) and bin storage. The roof extension comprises part-one, part-two storeys with a communal roof terrace at third floor level.

This permission was granted subject to a number of planning conditions, including a series of pre-commencement conditions. The following conditions have been discharged:

- Conditions 6 (Highway Condition Survey) and 7 (Demolition and Construction Management and Logistics Plan) – discharged on 22 July 2021 (ref: 21/2856/CON);
- Conditions 3 (Materials), 4 (Parking), 8 (Cycle Parking) and 17 (Refuse and Recycling Collection Strategy) – discharged on 30 September 2021 (ref: 21/3812/CON); and
- Condition 11 (Plant Noise Report) – discharged on 20 September 2011 (ref: 21/4409/CON).

On 14 January 2022, an application for non-material amendments to planning permission ref: 19/4282/FUL was granted (ref: 21/6336/NMA). Amendments included the reconfiguration of internal stairs, subdivision of internal units, addition of new stairs to eastern side of the building and reconfiguration of refuse, recycling and parking layouts, and alterations to elevations. A copy of the approved proposed floor plans is submitted as part of this application.

Development pursuant to planning permission ref: 19/4282/FUL, as amended, commenced on site in October 2021. The development is due to be completed in June 2022.

A series of pre-occupation discharge of condition applications are currently pending determination, including:

- Conditions 12 (Landscaping) and 15 (Enclosure / Boundary Treatment) – validated on 26 April 2022 (ref: 22/2229/CON); and
- Condition 13 (Privacy Screens) – validated on 28 April 2022 (ref: 22/2263/CON).

THE PROPOSED USE

The Applicant is in the process of acquiring the new side extension (now known as 107 Lancaster Road), which they are proposing to occupy as a 'professional delivery kitchen' (Class E(g)(iii)). The rest of the premises would remain under separate ownership and is not considered further under this current Application.

This Application relates solely to the use of the premises. Any additional external works, including ventilation or extraction, that may be required beyond that already consented by planning permission ref: 19/4282/FUL will be subject to a separate application for full planning permission.

THE LAWFUL USE

Planning permission ref: 19/4282/FUL did not alter the prevailing use (Class E(g)) of the existing building, which remains lawful in perpetuity. The new floorspace permitted under planning permission ref: 19/4282/FUL that is currently under construction benefits from a flexible Class B1 (now Class E(g)) use, which includes the following sub-categories:

- Class E(g)(i) – offices to carry out any operational or administrative functions;
- Class E(g)(ii) – research and development of products or processes; and
- Class E(g)(iii) – industrial processes.

ASSESSMENT OF THE PROPOSED USE

Jacuna Kitchens are a professional delivery kitchen operator with established premises across London, Birmingham, Manchester and Leeds. Established in 2019, Jacuna provide high quality professional delivery kitchens for a range of operators, including high street chains and independent and up-and-coming food brands. Jacuna provide and manage the kitchen facilities, working closely with local councils and other stakeholders, and offer an all-inclusive service, with significant employment opportunities not only for chefs and kitchen staff, but also for operational staff, delivery platform riders and local food-service suppliers.

Jacuna currently have 12 operational premises within the UK and are looking to expand their portfolio across London, with the aspiration for 15 additional new premises within the next 2 years.

Jacuna's operation comprises the process of food preparation and cooking, together with the distribution and delivery of food, with on-site management and operation services. For the reasons set out below, it is our view that Jacuna's professional delivery kitchen operation constitutes a Class E(g)(iii) (Industrial Process) use.

The Town and Country Planning (Use Classes) Order 1987 (as amended) (*"the Use Classes Order"*) defines an 'industrial process' as *"the making of an article or any part of an article ... in the course of any trade or business"*. Such processes are considered to fall under either Class B2 (General Industrial) or Class E(g)(iii) (Commercial, Business and Service – Any Industrial Process) of the Use Classes Order. An industrial process may be considered to fall under Class E(g)(iii) where it is a use *"which can be carried out in any residential area without detriment to the amenity of that area"*. Where this cannot be demonstrated, an industrial process will be considered to constitute a Class B2 use.

It is widely accepted that food preparation and cooking is considered to be an industrial process, which would indicate a Class E(g)(iii) in accordance with the Use Classes Order definitions. The premise of a professional delivery kitchen use is to relieve pressure on kitchens within existing restaurants and improve access to restaurant food for customers in high demand areas. By definition therefore, such uses typically operate as a 'last-mile' industry focused in highly urban locations. This is evidenced through the location of Jacuna's existing London premises, which include, inter alia, Vauxhall, Battersea, and Shoreditch. Through the implementation of mitigation measures, such as an Operational Management Plan, Delivery Management Plans and appropriate ventilation and extraction equipment, including odour control measures, it is considered that such uses can be carried out in a residential area without detriment to the amenity of the area, which would most appropriately constitute a Class E(g)(iii) use. There are many decisions and judgements that support this position (e.g. London Borough of Wandsworth ref: 2017/6758, London Borough of Lewisham ref: DC/21/120734 and London Borough of Brent ref: 21/1759).

In order to determine whether the Jacuna use falls within Use Class E(g)(iii), we consider it appropriate to analysis firstly whether the use is *"for any industrial process"* and secondly whether it is one *"which can be carried out in a residential area without detriment to the amenity of that area"*.

In terms of the first point, we draw upon a number of examples, including the Land Use Gazetteer, which lists a *"food preparation place with no sales to visiting members of the public"* as falling within Use Class B1(c) (now E(g)(iii)). We are also aware of a number of planning permissions that have been granted for professional delivery kitchen uses under a Class B1(c) / (Class E(g)(iii)) consent (see above and below). In our interpretation, the definition of an industrial process within the Use Classes Order is broad and we consider that the preparation and cooking of meals is a *"process for ... the making of an article"* and one that is plainly *"in the course of any trade or business"*. We conclude, therefore, that the use satisfies the definition of an industrial process for the purpose of a Class E(g)(iii) use.

Turning to whether the Jacuna use can be carried out in any residential area without detriment to the amenity of that area, we would again draw from examples and focus specifically on whether the release of noise, smell and fumes would cause detriment to the amenity of any residential area. With reference, to the mitigation measures that are to be adopted at each Jacuna site, including an Operation Management Plan, Delivery Management Plan and appropriate extract and ventilation, it is unlikely that the Jacuna use will cause a detriment to the amenity of any residential area. Furthermore, in the case of this Site, the undercroft car parking area provides an off-street, semi-enclosed area from which orders will be collected by delivery drivers. This will ensure that all collections take place from within the Site, and not the public highway, thereby offering further protection to the amenity of nearby properties.

In the light of the above, we conclude that the proposed use of the premises by Jacuna as a professional delivery kitchen will fall within Use Class E(g)(iii).

To provide an example specific to the Applicant, Jacuna recently began trading from Unit A, 964 North Circular Road in the adjoining Borough of Brent. To facilitate this use, planning permission was granted on 11 January 2022 (ref: 21/1759) for the *“continued use of the unit for uses in Class B8 (storage and distribution) and for Use Class E(g)(iii) (light industrial processes), with associated plant and extraction equipment, extension of existing mezzanine floorspace, addition of second floor mezzanine and installation of substation”*. The Delegated Report for this permission confirms that the proposed development comprises the addition of 742.6 sqm of additional floorspace for Use Class E(g)(iii) for food production and the subdivision of the existing and new space into food production units.

SUMMARY AND CONCLUSIONS

This Application for a Certificate of Lawfulness relates to the proposed use of the new side extension at 34 Henry Road as a professional delivery kitchen under Class E(g)(iii) of the Use Classes Order.

Planning permission for the Site was granted in May 2020, which included the construction of the side extension for flexible Class B1 (now Class E(g)) use. This permission, as subsequently amended, was implemented in October 2021 and the development is due to be completed in June 2022. By virtue of the 2020 planning permission, the lawful use of the floorspace within the newly constructed extension is considered to be flexible Class E(g).

Jacuna Kitchens' professional delivery kitchen represents an 'industrial process' in accordance with the definition set out in the Use Classes Order. Furthermore, taking into account mitigation that is to be implemented on site, it is considered that the proposed use can be *“carried out in any residential area without detriment to the amenity of that area”*. In conclusion, and with reference to other decisions and judgements that support this position, it is considered that the proposed professional delivery kitchen use constitutes a Class E(g)(iii) use.

In the light of the above, the proposed professional delivery kitchen use (Class E(g)(iii)) is deemed to be lawful and fully in accordance with the flexible Class E(g) use consented under planning permission ref: 19/4282/FUL.

ADMINISTRATIVE MATTERS

This Application is submitted via the Planning Portal (ref. PP-11239637) and comprises the following information:

- Application Form;
- Application Covering Letter (i.e. this letter);
- Copy of planning permission ref: 19/4282/FUL;

- Copy of approved Proposed Plans (4903/NMA/03); and
- Copy of Freehold Plans (4903.TP/01).

The application fee of £263.60 (including £32.20 Planning Portal administration fee) has been calculated in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (As Amended) and payment has been made online.

A request has been agreed with the London Borough of Barnet for this Application to be considered under Service 7 of the Council's fast-track service, which comprises an accelerated review and provision of an email within 5 working days of registration. Payment of the requisite fast-track fee will be made to the Council directly.

We trust that we have provided you with sufficient information to enable you to consider this application for a Certificate of Lawfulness. However, if you do have any queries or require any additional information, please do not hesitate to contact Harriet Humphrey [REDACTED] or [REDACTED] ([REDACTED]) at this office.

Yours sincerely,

MONTAGU EVANS LLP

Enc.