The Planning Inspectorate

Appeal Decision

Hearing held on 15 March 2022 and 8 June 2022
Site visit made on 8 June 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2022

Appeal Ref: APP/X5210/W/21/3277179
The Brunswick Centre, Bloomsbury, London WC1N 1BS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Lazari Properties 2 Limited against the Council of the London Borough of Camden.
- The application Ref 2020/3988/P is dated 2 September 2020.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is described on the application form as: "Class E".

Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs has been made by Lazari Properties 2 Limited against the Council of the London Borough of Camden. An application for costs has also been made by the Council of the London Borough of Camden against Lazari Properties 2 Limited. These applications are the subject of separate Decisions.

Preliminary Matters

3. It is clear from section 4 of the application form that the application is for an existing use and that the Use Class of the existing use for which a certificate is sought is specified as Class E.

4. Section 5 of the application form asks the applicant to **fully describe** each existing use (emphasis added). But the answer given is just "Class E". The answer given does not match the description given in section E of the appeal form or various different descriptions which appear throughout the appellant's submissions.

5. Different descriptions are seen in paragraphs 1.5, 3.1 and 4.1 of the November 2021 Grounds of Appeal, and paragraph 1.1 of appendix 8 and paragraph 1 of appendix 13 of the same document. It is clear that the description has been the subject of considerable debate during the application determination process, as is reflected in correspondence submitted by both main parties.

6. At the Hearing I asked the appellant to clarify what wording I should proceed with for the existing use and I was referred to an email dated 14 December 2020 by Tim Price which appears on page 15 of appendix 16 of the November 2021 Grounds of Appeal. This states the wording for the certificate is as follows and I have dealt with the appeal on this basis:

   "Application to certify that the existing use of the Brunswick Shopping Centre within Class E and without compliance with Condition 3 of Planning Permission: PSX0104561 is lawful."

7. The application was accompanied by a red line site location plan which indicates the entire Brunswick Centre is the subject of the application. This is consistent with the wording in the above description. However, units in the Brunswick Centre have been identified as sui generis. These include a cinema and a beauty parlour in unit 36, both of which have been identified as sui generis by the appellant, notwithstanding additional units which the Council says may not be within Class E.

8. In light of the wording of section 191 of the 1990 Act, on the first day of the Hearing I asked the appellant to clarify what plans I should refer to in order to specify the land to which the application relates. The appellant confirmed it is the 'green line' plans which appear in appendix 2 of the November 2021 Grounds of Appeal.

9. However, before the Hearing was reconvened on the second day, the appellant submitted a document entitled 'Exclusions Plan', amending the green lines which specify the land to which the application relates. These revised plans essentially exclude the car parks on the upper and lower basement levels from the definition of the land, as well as the cinema and unit 36. I have dealt with the appeal based on these revised plans.

Main Issue

10. It is clear from the evidence that had the Council made a decision on the application that its decision would have been to refuse. Therefore, the main issue is, if the Council had refused the application, whether the refusal would have been well-founded or not.

Background

11. On 1 September 2003, conditional planning permission was granted for the refurbishment of The Brunswick Centre. In summary, the scheme included extensions and alterations, the creation of new commercial units and relandscaping. A full description is included in an Annex at the back of this decision.

12. Condition 3 of the 2003 permission states:

    "Up to a maximum of 40% of the retail floorspace equating to 3386m2 (excluding the supermarket and eye-catcher) is permitted to be used within Use Classes A2 and A3 of the Town and Country Planning (Use Classes) Order, 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order."

13. The reason for Condition 3 is:

"To safeguard the retail function and character of the Brunswick Centre in accordance with policies SH1, SH2, of the London Borough of Camden Unitary Development Plan 2000."

14. "Class E", referred to in the above description for this appeal, was brought about by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 2020 Regulations). These amend The Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order).

15. The Use Classes Order specifies classes for the purposes of section 55(2)(f) of the 1990 Act. Section 55(2)(f) provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class.

16. Amongst other things, the 2020 Regulations revoke Parts A and D of the Schedule to the Use Classes Order and insert a new Schedule 2 providing for new classes including Class E (Commercial, business and service). Class E subsumes previous use classes which were specified in the Schedule to the Use Classes Order as Class A1 (Shops), Class A2 (Financial and professional services), Class A3 (Restaurants and cafés) and Class B1 (Business).

17. Essentially therefore, the 2003 planning permission permitted uses that now fall under Class E. I shall discuss below how the planning permission should be interpreted in light of the change to the Use Classes Order and the effect of Condition 3.

Reasons

18. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether— (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful; or (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, they may make an application for the purpose to the local planning authority **specifying the land** and **describing the use**, operations or other matter (emphasis added).

19. Section 191(2) of the 1990 Act states that for the purposes of this Act uses and operations are lawful at any time if—(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

20. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

21. The Planning Practice Guidance (PPG) states that the applicant is responsible for providing sufficient information to support an application[1]. So in an LDC appeal, the onus is on the appellant to make out their case. In the case of applications

[1] Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

for existing use, the PPG further states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently **precise** and **unambiguous** to justify the grant of a certificate on the balance of probability (emphasis added).

22. From the main issue set out above, as well as the description I have been asked to proceed with and the aforementioned exclusions plan, I have identified 3 principal areas for consideration in this appeal. They are: the description of the existing use, the specification of the land and the effect of Condition 3 of the 2003 planning permission.

Description of the Existing Use: "Class E"

23. The PPG states that an application needs to **describe precisely** what is being applied for (**not simply the use class**) and the land to which the application relates, and that without sufficient or precise information, a local planning authority may be justified in refusing a certificate[2] (emphasis added).

24. The PPG[3] goes on to say:

*"a certificate for existing use must include a **description of the use**, operations or other matter for which it is granted **regardless of whether the matters fall within a use class**. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, **the description needs to be more than simply a title or label**, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision."*

25. A use class is not a land use. So the description I have specifically been asked to proceed with, which still relies on "Class E", does not accord with the PPG, in respect of the above.

26. I raised this specific concern with the appellant on both days of the Hearing. The appellant said that the PPG was not formulated in 2014 with Class E in mind, and, that this application is the only way to establish a site is in a use falling within Class E. Be this as it may, the PPG merely reflects what is required pursuant to section 191 of the 1990 Act as well as Article 39 and Schedule 8 of The Town and Country Planning (Development Management Procedure (England) Order 2015 (the DMPO).

27. I have considered if this concern may be addressed by a modified or substituted description, pursuant to section 191(4) of the 1990 Act. But this would require me to identify and describe the land use for every relevant part of the land in the Brunswick Centre. At the Hearing the appellant said it is "not right" for me to use the 'description of operation' data from Appendix 10 of their Grounds of Appeal, to assist me with such a modification of their description. So I have not done so. The appellant's statutory declaration does not help me either as this also just refers to use classes rather than land uses.

[2] Lawful development certificates, Paragraph: 005 Reference ID: 17c-005-20140306
[3] Lawful development certificates, Paragraph: 010 Reference ID: 17c-010-20140306

28. The appellant has pointed to examples of existing use 'Class E' LDCs granted by other Councils. But I have not been provided with full details of how those Councils reached their decisions and I have reached a different conclusion in light of the PPG, section 191 of the Act and the DMPO. In addition, unlike this LDC, the examples do not seek to incorporate non-compliance with a condition.

29. I fully appreciate what the appellant is trying to achieve, which is to provide certainty for future tenants that the floorspace can be occupied and used flexibly within Class E, to help facilitate the re-occupation of vacant floorspace[4]. But it strikes me that, notwithstanding any other concerns, this is the role of an LDC for a **specific** use made under section 192 rather than section 191. It is a long established principle that LDCs enable owners and others to ascertain whether **specific** uses, operations or other activities are or would be lawful. They do not enable anyone to ask the general question, "what is or would be lawful?"

30. Moreover, noting the appellant's clearly stated view that there are no units at the site operating in breach of the 2003 permission, there is no statutory provision to propose a breach of condition. So seeking non-compliance with Condition 3, as worded in the description, fundamentally confuses what this LDC application is for.

31. I conclude that, for this area of consideration in this appeal, the description is ambiguous and imprecise.

Specification of the Land: "The Brunswick Shopping Centre"

32. By reason of the aforementioned exclusions plan, the application is clear that it does not include the cinema, unit 36 or the car parking areas. But by implication therefore, (including because of the description I have been asked to proceed with, which does not restrict the land only to "floorspace"), the land does include everything else shown on these plans. A key complicating factor in this case is that some 40 plus units are included, each of which has their own planning history.

33. At the site visit, it was obvious that the land which is **not** excluded from the application (by reason of the exclusions plan) includes ground floor residential accommodation, pedestrian accesses to residential accommodation above the shopping centre, external public spaces and the servicing/access roads to the basement car parking areas (which are not exclusively for use by users of the shopping centre). These are uses that, on the balance of probability, would not fall within Class E. It seems likely that it was not the appellant's intention to describe these areas as falling within Class E. As such, the exclusions plan is imprecise and ambiguous.

34. The above problem with the specification of the land seems to arise because the exclusions plan defines land which is **excluded**, rather than a more precise approach, which would be to define the land which is **included**. It was also clear at the site visit that the exclusions plan is not correctly drawn around the cinema.

35. I have considered whether the above difficulties may be resolved by modifying the description to, for example, refer only to commercial floorspace, as was suggested by the appellant at the site visit, or by me redrawing the plans. But it is clear that at least some of the commercial units trade from part of the external public space. I am not satisfied this is 'floorspace'. I therefore consider an

[4] Grounds of Appeal, November 2021, paragraph 1.10

accurate plan is essential to specify the land. But it is not clear precisely where the lines should be drawn.

36. In addition to the above, and notwithstanding the effect of Condition 3, which I deal with below, the Council has identified specific units which it disputes may be considered as Class E. In this regard, my attention has been drawn to Conditions 5 and 11 of the 2003 permission.

37. But under section 193(5) of the 1990 Act, a certificate under section 191 or 192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate. As such, I do not need to consider any conditions other than Condition 3, as this is the only condition referred to in the description I am asked to proceed with. In other words, if I were to allow the appeal, I would only be certifying that non-compliance with Condition 3 was lawful on the date of the application and not non-compliance any other conditions on the 2003 permission.

38. Specific units the Council disputes could be considered as Class E on the date of the LDC application are Nos 2, 7, 8, 9, 11-13, 16, 19-21, 28, 30-32, 38 and 44-46. The common theme for all of these units, according to the Council, is that the use being carried out in each of them at the time of the LDC application included a hot food takeaway component, and, the Council is not satisfied that this was not a primary component of the use of each unit.

39. Under the 2020 Regulations, a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises is a sui generis use, ie it is not within Class E. Equally, any mixed use which includes a primary component of hot food takeaway does not fall within Class E either. This matters because if, without planning permission, by the date of the LDC application, any unit had become a hot food takeaway or a mixed use including a hot food takeaway primary component, the lawful use of the unit may have been lost due to the lack of any right of reversion to the lawful use, pursuant to section 57(4) of the 1990 Act[5].

40. At the Hearing the Council said that its evidence of the hot food takeaway component of the use of the above units includes officers' observations, knowledge of the operators' business models and the consequences of Covid (ie a significant increase in hot food takeaway business since the start of the pandemic). As has been stated by the appellant, the vast majority of the tenants at the site (existing and past) are national multiples and their business model and nature of operations are well known and understood[6].

41. In this context, I find the Council's concern, made clear at the Hearing, that the hot food takeaway component in the above units may be a primary component of the use therein, is entirely reasonable. Moreover, it is consistent with my own observations when visiting the site, where I saw several hot food delivery riders waiting outside disputed units and many of the disputed units clearly advertising that hot food is available for takeaway and delivery. There is no evidence the use of any of these units has materially changed in this regard since the date of the LDC application.

[5] See also Encyclopedia of Planning Law and Practice, Volume 2, P57.08
[6] Grounds of Appeal, November 2021, paragraph 3.17

42. I appreciate that surveys and enforcement investigations undertaken at the site may not have found there to be a hot food takeaway use for any of the disputed units. But the outcome of those surveys and investigations are relevant only at the time they were undertaken. They precede the date of the LDC application and the situation may have materially changed by the date of the LDC application, particularly taking into account the effects of Covid.

43. The Council's concern about hot food takeaways contradicts or otherwise makes the appellant's version of events less than probable for the disputed units. The Council says its requests for clarity on the uses have not been provided. Given that the burden of proof is on the appellant, on the balance of probability, based on the cases put to me, I am not satisfied that the above disputed units do not include a primary component of hot food takeaway use. On this basis they may not be within Class E.

44. Specific attention has been drawn to 'Leon' in unit 2. In this unit, Leon operates under a 2017 planning permission[7] for a mixed use of retail, restaurant and takeaway. The appellant's position is that, at the date of the LDC application, this unit became Class E because it comprised a mixed use of retail and restaurant, both of which are now in Class E, and the takeaway component is ancillary. But there is nothing within the four corners of the 2017 decision notice to indicate this is the case.

45. The appellant refers to an extract of the planning statement submitted for Leon, which refers to 'ancillary takeaway sales'. But this does not change the description of development on the decision notice for Leon, even though 'accordance with' the planning statement is required by Condition 2 of its decision notice.

46. In any event, the planning statement for Leon indicates its hot food takeaway component is generally circa 15% of sales. The Council has referred to Public Health England guidance (PHE, Document 21) which indicates that the degree to which the sale of hot food takeaway items is ancillary to the main use within A3 premises is not defined, but decisions from planning appeals have held this to be a small proportion of sales, ie 4-10% of total sales. I have no reason to disagree with this guidance and so on this basis the 'circa 15%' for Leon is not ancillary and so Leon cannot be considered as Class E.

47. Even if I should not rely on the threshold set out above, from the PHE guidance, no specific evidence, such as sales figures, has been provided for any of the disputed units to satisfy me that any hot food takeaway component within them was ancillary on the date of the LDC application.

48. I have considered whether the disputed units may be excluded from the LDC to overcome the above difficulties with the specification of the land. During the Hearing I canvassed the views of the parties on this and I have concluded that, by modifying the description of the LDC with reference to the disputed units, as shown on the exclusions plan provided, the disputed units could be excluded from the LDC. But doing this would not overcome the imprecision and ambiguity I have found with the exclusions plan in respect of other parts of the site. Moreover, doing this would not address the ambiguity and imprecision in the description, or the effect of Condition 3, which I discuss below.

[7] Ref: 2017/0202/P dated 29 September 2017

The Effect of Condition 3 of the 2003 Planning Permission

49. This area of consideration in this appeal requires me to interpret the 2003 planning permission, specifically Condition 3. To carry out this task, as is stated in *Lambeth*[8], the starting-point - and usually the end-point - is to find "the natural and ordinary meaning" of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense.

50. Consistent with *Trump*[9], I must consider what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which I must have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense.

51. The purpose of Condition 3 is clear from its stated reason. It is to safeguard the retail function and character of the Brunswick Centre. It does this by stating a maximum amount of floorspace that is permitted to be used for A2 and A3 purposes.

52. The appellant states that, given the changes to the Use Classes Order, Condition 3 no longer provides an enforceable control given its specific wording, and that therefore, the existing use of the Brunswick Shopping Centre within Class E and without compliance with Condition 3 is lawful.

53. According to the appellant, the wording of Condition 3 includes specific provision to incorporate the new Class E into the Condition (ie the references to Classes A2 and A3 are automatically replaced with Class E). But in light of *Parkview*[10], I do not accept this argument. This is because the scope of the 2003 permission should be interpreted in light of the version of the Use Classes Order in force at the date of the grant.

54. In other words, "A2" and "A3", referred to in Condition 3, mean the land uses "Financial and professional services" and "Food and drink", respectively. In my view, this is the natural and ordinary meaning of the words and a matter of common sense. In the context of the 2003 permission, A2 and A3 cannot now mean any land use within Class E. If that were the case, Condition 3 would be meaningless and have no purpose. For the purposes of the 2003 permission, the "equivalent" classes now, following the changes to the Use Classes Order brought about by the 2020 Regulations, are Class E(c) and, in broad terms, Class E(b), respectively.

55. Having regard to *UBB Waste*[11], the interpretation advanced by the appellant flies in the face of the purpose of the condition and the policies underlying it and so common sense indicates that the appellant's interpretation is not correct and Condition 3 continues to restrict how the land may be used.

56. The appellant states that Condition 3 contains no wording to the effect that the usual operation of the Use Classes Order is removed in relation to the site so as to prevent changes of use within any given use class. But Condition 3 states a

[8] *Lambeth LCB v Secretary of State for Housing Communities and Local Government* [2019] UKSC 33
[9] *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74
[10] *R (Parkview Homes Limited) v Chichester DC* [2021] EWHC 59
[11] *UBB Waste Essex Ltd v Essex CC* [2019] EWHC 1924

specific maximum figure that is permitted for A2 and A3 uses, ie more than that figure is not acceptable.

57. So having regard to *Dunnett*[12], Condition 3 clearly evinces an intention on the part of the local planning authority to exclude the operation of the Use Classes Order. Consistent with *Royal London*[13], Condition 3 only makes sense if there is an implied exclusion of the Use Classes Order or else it has no purpose. The purpose of Condition 3 is clear and it remains enforceable since the uses that are restricted are known, those being the uses set out as falling within Class A2 and A3 when planning permission was granted.

58. During the Hearing, the appellant advanced an argument that the reasonable reader would interpret Condition 3 as being imposed to seek to control matters relating to the use of units during 'the 10 year period' but not beyond. That 10 year period being from the date of grant of the 2003 permission, pursuant to a permitted development right under Schedule 2, Part 3, Class E[14], paragraph E.1(b) of The Town and Country Planning (General Permitted Development) Order 1995 (the GPDO).

59. But Condition 3 does not say this. Moreover, there is nothing in the planning permission, the officer's report or the planning application documents to support the appellant's case in this regard either, bearing in mind the development applied for was principally for extensions and alterations.

60. Whilst the 2003 permission clearly provided some flexibility over where A2 and A3 uses could go, on the cases put to me, I am not satisfied that the 2003 permission was a 'flexible' permission for the purposes of Schedule 2, Part 3, Class E of the GPDO.

61. I conclude that Condition 3 continues to restrict how the site may be used. There is no suggestion that the condition had not been complied with for a continuous period of 10 years or more. So, bearing in mind the description I have been asked to proceed with, this LDC application does not satisfy section 191(2) of the 1990 Act.

Other Matters

62. The appellant states that Class E was introduced to increase flexibility, to better meet commercial requirements and that the grant of this certificate would accord directly with the intended effect of the amendments to the Use Classes Order in September 2020. I have seen that there are vacant units at the site and at the Hearing I heard that some occupants are paying no rent.

63. But these are planning merits arguments and the PPG is clear that planning merits are not relevant at any stage in a lawful development certificate application or the appeal process for such an application[15]. These points do not enable me to grant the certificate in light of my findings above.

64. I fully appreciate that the owner may wish to increase the amount of floorspace used as a café or restaurant[16]. But in light of the difficulties set out above, as has been said by the Council, it is open to the appellant to apply to vary

[12] *Dunnett Investments v SSCLG* [2017] EWCA Civ 192
[13] *R (Royal London Mutual Insurance Society) v SSCLG* [2013] EWHC 3597
[14] Not to be confused with the 'Class E' brought about by the 2020 Regulations.
[15] Lawful development certificates, Paragraph: 009 Reference ID: 17c-009-20140306
[16] Grounds of Appeal, November 2021, Appendix 14, paragraph 5

Condition 3 (and others, if required), drawing on planning merits arguments including those which have been put forward in this appeal.

65. The appellant states that the position now being adopted by the Council is contrary to that which was established between the parties in December 2020. But the emails I have been referred to are not decisions of the Council and one of them clearly expresses the view that the LDC application cannot be granted.

66. The LDC application has been subject to delay. But this has no bearing on whether the matter for which the LDC was sought is lawful or not.

Conclusion

67. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of: *"Application to certify that the existing use of the Brunswick Shopping Centre within Class E and without compliance with Condition 3 of Planning Permission: PSX0104561 is lawful",* was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

L Perkins

INSPECTOR

Annex

Description of Planning Permission PSX0104561dated 1 September 2003

"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, as shown on drawing numbers: 2105/PL100A; /PL101A; /PL102A; /PL104A; /PL110A; /PL111A; / PL112A; /PL113A; /PL114A; /PL115A; /PL120A; /PL121A; / PL122A; /PL124A; /PL140A; /PL141A; /PL142A; /PL144; /PL150A; /PL151A; /PL152A; /PL153A; /PL154A; /PL155A (Sheet 1 of 3); /PL155A (Sheet 2 of 3); /PL155A (Sheet 3 of 3); /PL160A; / PL161A; /PL162; /PL163A; /PL164A; /PL170A; /PL171A; /PL172A; /PL173A; /PL180A; /PL181A (Sheet 1 of 2); /PL181A (Sheet 1 of 2); /PL182A; /PL183A; and /PL190; and Acoustic Consultancy Report by Buro Happold April 2001; Concrete Upgrade Options by Buro Happold April May 2001; Planning Report by Levitt Bernstein 21 May 2001; and Transport Assessment By Symonds Group December 2001."

APPEARANCES

FOR THE APPELLANT:

Reuben Taylor QC	Landmark Chambers
Len Lazari	Lazari Properties 2 Limited
David Smith	Lazari Properties 2 Limited
Timothy Price	Savills
Heloise Whiteman	Savills

FOR THE COUNCIL:

Sasha Blackmore	Landmark Chambers
Gary Bakall	Enforcement Deputy Team Leader
Elizabeth Beaumont	Appeals and Enforcement Manager
Bethany Cullen	Head of Development Management
David McKinstry	Conservation Officer
Louise McLaughlan	Senior Lawyer
Deirdre Traynor	Principal Planner

DOCUMENTS SUBMITTED BY THE APPELLANT DURING THE HEARING

A Part 3 GPDO as at 1 September 2003

B *Dunnett Investments Limited v Secretary of State for Communities and Local Government* [2017] JPL 848

C *Lambeth LBC v Secretary of State for Housing Communities and Local Government* [2019] UKSC 33

D *R (on the application of Parkview Homes Ltd) v Chichester DC* [2021] EWHC 59 (Admin)

E *R (Royal London Mutual Insurance Society) v Secretary of State* [2013] EWHC 3597 (Admin)

F Further Written Submissions

G Exclusions Plan

H Speaking Note

DOCUMENTS SUBMITTED BY THE COUNCIL DURING THE HEARING

1 *R (Parkview Homes Limited) v Chichester DC* [2021] EWHC 59

2 *UBB Waste Essex Ltd v Essex CC* [2019] EWHC 1924

3 *Chelmsford CC v Leisure Park Real Estate Holding Ltd and Others* [2021] EWHC 666

4 *Lambeth v SSHCLG* [2019] UKSC 33

5 *Dunnett Investments v SSCLG* [2017] EWCA Civ 192

6 *University of Leicester v SSCLG* [2016] JPL 709

7 *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74

8 *Wood v SSCLG* [2015] EWHC 2368

9 *R (Royal London Mutual Insurance Society) v SSCLG* [2013] EWHC 3597

10 *Fidler v First Secretary of State* [2005] 1 P& CR 12

11 *R v Ashford BC ex p Shepway DC* [1999] PLCR 12

12 *Church Commissioners for England v Secretary of State for the Environment* [1995] 2 PLR 99

13 *Dunoon Developments v Secretary of State for the Environment and Poole Borough Council* (1993) 65 P & CR 101

14 Town and Country Planning Act s.55, s.192

15 General Permitted Development Order 1995 Schedule 2, Part 3, Class E, as in force in 2013

16 General Permitted Development Order 1995, Schedule 2, Part 3, Class V as currently in force

17 The Town and Country Planning (Use Classes) Order 1987 as originally enacted

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

19 The Town and Country Planning (Use Classes) Order 1987 as currently in force

20 Addendum: Hot Food Takeaways Use in the new Use Class Order, 19 February 2021

21 Public Health England: "Using the planning system to promote healthy weight environments. Guidance and supplementary planning document template for local authority public health and planning teams", 2020

22 Extracts from the PPG

23 Neil McDonald email dated 30 April 2021 and preceding email trail

24 Legal Note on Caselaw

25 Additional Hearing Statement

26 Response to Additional Hearing Statement