

19 March 2021

Manchester City Council Planning Department
PO Box 532
Town Hall
Manchester
M60 2LA

Sent by Email

Dear Sir / Madam

**LAWFUL DEVELOPMENT CERTIFICATE FOR UNRESTRICTED USE AS COFFEE SHOP / RESTAURANT
107 MARKET STREET, MANCHESTER, M1 1NN**

This letter accompanies an application for a Lawful Development Certificate for a Proposed Use or Development under Section 192 of the Town and Country Planning Act 1990 (as amended) and having regard to the Town and Country Planning (Use Classes) Order 1987 (as amended). The application relates to the unit at 107 Market Street, Manchester M1 1NN and is submitted on behalf of TH UK & Ireland Ltd, the prospective occupier of the unit.

The application seeks confirmation that the use of the unit as a restaurant and coffee shop with an ancillary takeaway offer is in accordance with the established use of the property.

REASON FOR APPLICATION

107 Market Street was, until recently, occupied by Jessops the camera retailer but their lease came to an end in July 2020. Our client TH UK & Ireland is now in discussion with the landlord to acquire the unit with the intention of occupying it as a Tim Hortons restaurant with a coffee and bakehouse offer.

However, neither we nor the landlord have been able to confirm the operative consent for the unit and our client is keen to establish that the proposed use of the unit is in accordance with the permitted use (prior to occupation).

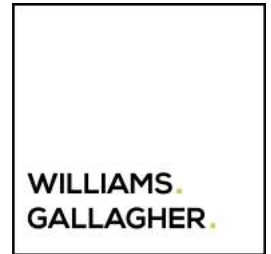
PERMITTED USE OF THE BUILDING

Our review of the planning history for the unit suggests that the unit would have been developed under one of a number of possible historic planning permissions, as set out below. However, in all cases the use of the unit would be as a retail shop and the use of the unit for this purpose would be unrestricted.

- Application Ref: 54/18/60598

This application for the *"erection of shops, retail, market, offices, residential accommodation, bus station, car park & public house on land bounded by Market Street, Corporation Street, Withy Grove, St Nicolas Croft & High Street"* was approved on 3 March 1972 and appears to be the original permission for the Arndale Centre development, which was constructed between 1971 and 1979¹. Condition 1 restricts the units in specified levels of the development to use for retail shopping and related storage only as defined by Class 1 of the 1963 Use Classes Order.

¹ <https://manchesterarndale.com/about/>



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At the time, Class 1 uses were defined as:

Use as a shop for any purpose except as: -

- (i) a fried fish shop;*
- (ii) a tripe shop;*
- (iii) a shop for the sale of pet animals or birds;*
- (iv) a cats-meat shop;*
- (v) a shop for the sale of motor vehicles.*

Further 'shop' was defined as *"a building used for the carrying on of any retail trade or retail business wherein the primary purpose is the selling of goods by retail, and includes a building used for the purpose of a hairdresser, undertaker or ticket agency or for the reception of goods to be washed, cleaned or repaired, or for any other purpose appropriate to a shopping area, but does not include a building used as a funfair, garage, petrol filling station, office, betting office, or hotel or premises (other than a restaurant) licensed for the sale of intoxicating liquors for consumption on the premises"*.

There are no conditions restricting the trading hours of the units.

- Application Ref: 052230/00/CITY1/97

This application for *"major development including the extension of buildings between Market St & Withy Grove onto highways of Corporation Street, Withy Grove, and onto Cannon Street to create new retail, restaurant & wintergarden facilities, and which will affect public rights of way and create new accesses into the Arndale Centre"* was approved on 18 September 1997.

- Application Ref: 053600/FO/CITY1/98

This application for *the "extension of Arndale Centre along the Corporation Street frontage, between Market Street & Cannon Street, at ground, first & second floor levels"* was approved on 12 March 1998.

- Application Ref: 059873/00/CITY1/00

This application for the *"partial redevelopment and reconstruction of the northern part of the Arndale Centre including retail, restaurant, office and ancillary accommodation comprising A1, A2, A3, B1, B2, D2 uses at the Arndale Centre"* was approved 5 January 2001.

Given the age of the unit and the canopy feature that would appear to date from the original Arndale Centre development (proposed for removal under Application Ref: 126864/FO/2020), the unit at 107 Market Street seems to have been developed under the 1972 approval. Further evidence for this is provided below.

ESTABLISHED USE OF THE BUILDING

What we have been able to ascertain is that the planning history for the unit dates back to 1974 and thus supports the case that the unit was developed under the 1972 permission.

The following applications all refer to 107 Market Street which would have been created as part of the original Arndale Centre development. They also confirm that the unit has been in retail use for a considerable time [emphasis added]:

- Application Ref: F/AD00367 – *"a) illuminated single sided name and trade sign situated above entrance doorway on front elevation of shop, projecting over highway. b) Illuminated double sided box sign on front elevation of shop, projecting over highway"* – temporary consent dated 1 November 1974.

- Application Ref: 048372/AO/CITY1/95 – *"installation of a new shopfront"* – granted 26 October 1995.
- Application Ref: 059913/AO/CITY1/00 – *"illuminated fascia name sign and 2no. projecting signs"* – granted 21 August 2000. Applicant was Going Places (a travel agent).
- Application Ref: 060076/FO/CITY1/00 – *"installation of a new shop front"* – granted 28 September 2000. Applicant was Going Places (a travel agent).
- Application Ref: 063709/AO/CITY1/01 – *"new fascia signs and two projecting signs"* – granted 4 January 2002. Applicant was UK Leisure Group.

We also have evidence from Google Street View that supports the current landlord's more recent information regarding the retail use of the unit since 25 December 1995, when the most recent 25-year lease was agreed. At that time, the lease agreement was between (1) British Shoe Corporation Limited and (2) British Gas plc. At some point the lease was assigned to Thomas Cook Retail Limited and Thomas Cook then entered into a number of short term underleases with Jessops.

As can be seen below, Google Street View supports the recent history of the unit, with Figure 1 showing that, whilst the unit was then vacant, it had previously traded as 'Manfield,' a shoe retailer. Jessops then took the lease of the building in 2011 and opened in May / June 2011 (Figure 2). They continued to trade from the unit until their lease expired in 2020 (Figure 3).



Figure 1: Google Street View (July 2008)



Figure 2: Google Street View (May 2011)



Figure 3: Google Street View (July 2019)

PROPOSED USE OF THE BUILDING & BACKGROUND TO TIM HORTONS

By way of background, Tim Hortons is a relatively new entrant to the UK market and can best be described as a restaurant chain with a coffee and bakehouse offer. It thus operates primarily as a café / restaurant with ancillary takeaway and in doing so is able to lawfully operate under Class E of the recently amended Use Classes Order (as it does, for example, from 112 -113 New Street in Birmingham²).

The brand was founded in 1964 in Hamilton, Ontario, Canada. It has since grown into Canada's most loved brand with over 4,500 stores from coast to coast. Known affectionately as 'Timmy's', it is a place famous for its fresh coffee and baked goods and is visited by more than 5.3m Canadians daily (approximately 15% of the population). As well as coffee and doughnuts, Tim Hortons serves a wide variety of food and beverages such as toasted bagels and wraps.

Tim Hortons opened its first store in the UK in 2017 and now has 27 outlets across all four countries of the UK with more opening soon.

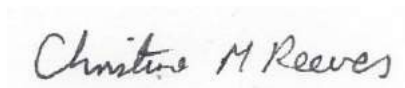
CONCLUDING REMARKS

The evidence set out above indicates that the unit was first developed as part of the original Arndale Centre scheme and as such it has permission for Class 1 use under the 1963 Use Classes Order. It has also been in retail use since circa 1974.

As such, it would have been in Class A1 use on 31 August 2020 and following the 2020 amendment to the Use Classes Order, would now be regarded as an E Class use. We therefore consider that its occupation by Tim Hortons for its unrestricted use as a coffee and bakehouse / restaurant with ancillary takeaway is lawful, either by virtue of the original permission where Class 1 uses included restaurant and takeaways within the 'shops' category, or on the basis that the unit has been in retail use for more than 10 years and was in this use on 31 August 2020.

We trust that all the information is provided is sufficient to make a positive determination of the application within the statutory timescales. However, should you have any queries please do not hesitate to contact me.

Yours sincerely



Christine Reeves
WILLIAMS GALLAGHER

² Planning permission for the change of use of this unit from A1 to A3 was granted on 11 September 2018 under Birmingham Application Ref: 2018/06061/PA. The unit is now classed as comprising an E Class use.