

Our Ref: VH/KN0021/24

13 June 2024

Gravesham Borough Council
Civic Centre
Windmill Street
Gravesend
Kent
DA12 1AU

via email

Dear Sir/Madam,

Certificate of Lawfulness (Section 191 of the Town and Country Planning Act (1990))
RE: The Woodlands, Wrotham Road, Gravesend, DA11 7LF
Planning Portal Ref: PP-12862682

We have been instructed by Whitbread PLC to submit to you the enclosed application for a Certificate of Lawful Use under Section 191 of the Town and Country Planning Act 1990 for:

“Use of the premises as a restaurant falling within Use Class E ‘Commercial, Business and Service’ of the Use Classes Order”

The application has been submitted electronically via the Planning Portal and along with the application form, comprises the following:

- Supporting Exhibits;
- Signed and dated Statutory Declaration.

This letter forms part of the application and should be read in support of it.

Introduction

This application is submitted to obtain a formal legal Certificate from the Council in relation to the use of land and buildings comprising The Woodlands (identified with a red line on the enclosed site location plan) as a restaurant within Use Class E (formerly Use Class A3). The certificate seeks to confirm its use as a restaurant.

The application provides evidence that for more than 10 years the primary purpose and function of the premises has been as a restaurant for the sale of food and drink for consumption on the premises. Whilst it is not disputed that the Woodlands serves alcoholic drinks, the sale and consumption of



alcoholic drinks at the premises is ancillary to the main use of the premises. As such, the Woodlands by definition a restaurant within Use Class E of the Town and Country Planning (Use Classes) Order 1987.

The Site

The site comprises the establishment known as the Woodlands (the Site). The premises is located Wrotham Road, Gravesend, DA11 7LF

The subject site extends to an area of circa 0.1 Ha and comprises a two storey building, together with car parking and a small outdoor seating area.

Legislation and Case Law

This application is made in accordance with Section 191(1) of the Town and Country Planning Act 1990, which states that if any person wishes to ascertain that an existing use of buildings and land is lawful, they may make an application for this purpose to the local planning authority specifying the land and describing the use.

If the local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, they are required to issue a certificate to that effect.

Case law has established that the onus and burden of proof is on the applicant to prove, on the balance of probabilities, that the Certificate of Lawfulness should be granted. Clear guidance on these matters is contained within the NPPG, which states that *“in the case of applications for existing use, 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”*.

Use Classes Order

The site trades under Class E, which was introduced in The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

The definition of Class E(b) is *‘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’* This has a basis in the former, Class A3 ‘Food and Drink’ of the Town and Country Planning (Use Classes Order) 1987.

When the amended Use Classes Order came into effect in 2020, the on-site restaurant moved from being within Use Class A3 to the new use Class E(b). Whilst the premises serve alcoholic drinks and has a ‘bar’, the vast majority of drinks are purchased and consumed as part of a meal. The ‘bar’ element is very much ancillary to the main and primary use of the premises as a restaurant.



The use of the site is 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. This is a Class E use within the current Use Classes Order.

The enclosed Statutory Declaration, signed by Simon Ewins, Whitbread Managing Director for UK Hotels and Restaurants on 6/6/2024, clearly evidences the position that this site has traded as a restaurant consistently for more than 10 years. During this time, food sales have made up on average 68% of sales from the site.

The 32% beverage sales includes drinks bought in conjunction with a meal, which is the predominant form of drinks purchases at this site and across the Whitbread network. As such, the figure at the site for solus drinks purchases – as would normally be seen at a Public House or Bar – is much lower than the figure noted above.

Planning History

The following relevant planning history has been identified;

20070029 Erection of single storey extension on the eastern rear elevation to provide additional restaurant area and provision of two jumbrellas at the rear.
Approved 2007

20010249 Erection of a conservatory on the western elevation to enlarge the existing restaurant.
Approved 2001

19950201 Erection of single storey rear extension to form enlarged restaurant and enlarged bar; formation of new patio and erection of two external staircases on the north side and rear elevations.
Approved 1995

19830569 Alterations to the front elevation and erection of a canopy at the side
Approved 1983

Existing Lawful use of the Site

This application seeks a Certificate of Lawful Existing Use for the use of the premises as a restaurant within Use Class E '*Commercial, Business and Service*'.

The submitted Statutory Declaration very clearly supports the site subject of this application to have remained in Restaurant use (only), for a period of in excess of 10 years. During this period, food sales have predominated at the site (68%), even when drinks bought in conjunction with a meal are excluded from the above figure.

Additional evidence to support the applicant's case is set out below under the following headings:

- Food offer, operation and brand history;
- The layout of the premises; and
- Trading data.



Food Offer, Operation and Brand History

Brand History

For more than 10 years, the Woodlands restaurant has offered an extensive food menu with a wide selection of starters, mains, and desserts and a children's menu. **Exhibit I** provides sample menus from the site over recent years.

The scale and choice offered is reflective of a restaurant, as opposed to that which might be seen within a Public House, where a much more constrained choice of food options would generally be offered.

Food Offer

Food is continually available on site from 1130 until 2200.

Operation

Operational requirements mean that the premises trades as a standard Beefeater and as such offers standardised menus. **Exhibit I** of our evidence comprises of a series of dated menus used by the site since at least 2011.

Within these menus, the commercial offer is aimed at encouraging trade from 1200 to 1800, for example, the 2011 menu offers a "Daytime Value Menu" and "Lighter Bites" option. This is continued in the 2023 menu provided.

The 2023 'Grill' menu highlights the specialisation of the Beefeater Restaurant brand as a 'steakhouse'. A Sunday Carvery has been consistently provided, this is reflected in the example menus from 2011 through to the 2023 examples.

Exhibit I clearly shows the consistency of the food provision at the Woodlands and the menus consistently show the extent of the food offered on site. This is clearly a food-based operation.

As confirmed within the submitted Statutory Declaration, reservations are taken for tables in advance, by in-person booking, phone or email. Customers without reservations ('walk-ins') can be seated if there is available space.

Customers are welcomed at the front door desk by a server who greets them, checks their reservation, or, if a walk-in, advises them of availability for a table. A server then takes them to their allocated table and menus are provided. Food and drink orders are taken by servers from the Customers whilst they are seated at their table. Plated food and drinks are then brought to them. A bill is presented at the end of the meal for payment, which includes an optional service charge. **Exhibit**



4 indicates the operational processes which underpin the day-to-day running of these units and a clear prioritisation of the food provision within the premises.

On a daily basis the restaurant is staffed by 21 servers, 13 kitchen staff (comprising chef, assistant chef etc)], and 3 managers with responsibility for front of house, back of house/kitchen, and the wider restaurant respectively.

These numbers are the average figures for the past ten years and highlight the scale of operation at the Woodlands as a restaurant. The staffing numbers and management requirements provide clear evidence of its use as a restaurant.

The above operation and staffing are clearly reflective of a restaurant use.

Through the use of Google Street View Imagery, we are able to confirm the use of the site as the current branding since at least 2016. However, we know that the site has operated as a restaurant for a much longer period than this.

Layout

The layout of the premises has remained fundamentally unchanged since the commencement of the use of the site as a restaurant in 1998 and has remained so for a period in excess of 10 years.

The photographs at **Exhibit 2** and plans at **Exhibit 3** also clearly note the uninterrupted restaurant use of the site.

Drawing 'Proposed Ground Floor Plan Ref. 06/123/04 dated 2006 shows the historic layout of the premises.

'Licencing Plan' Drawing Ref. 214080/7.0 Rev. A dated 2015 (included at **Exhibit 3**) shows the premises continuing to be laid out and used in the same way and the premises comprising entirely of a restaurant with tables and chairs for dining. Little change is identifiable between these two plans, showing consistency over this period.

All plans show the premises laid out as a restaurant with tables and chairs and clearly illustrate the primary activity in the premises has been dining and the consumption of food.

Additionally, the plans show that the premises have always had a large kitchen with associated restaurant-scale refrigeration and freezers. Such a large and extensive kitchen would not be found in premises whose primary function is the sale and consumption of alcoholic drinks or where there is a limited food offer and is further confirmation that the premises are a restaurant.



Trading Data

The site's trading data since 2013 confirms that 68% of purchases made from the restaurant were for food. The remaining 32% comprised the sale of beverages. As we have already noted, this 32% figure is somewhat misleading, as it includes drinks purchases bought in conjunction with the purchase of a meal – purchases that would be expected in any restaurant.

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Food	70.08%	69.22%	67.37%	66.91%	67.05%	67.24%	67.07%	67.36%	70.9%	70.67%	67.96%	68.21%
Drink	29.92%	30.78%	32.63%	33.09%	32.95%	32.76%	32.93%	32.64%	29.1%	29.33%	32.04%	31.79%

Unfortunately, the manner in which my client records purchases does not allow drink purchases to be split between those made in conjunction with meals, or those bought as a solus purchase. As the Statutory Declaration outlines, drinks bought in conjunction with meals is the predominant form of beverage purchase across the Whitbread estate and also at this site. As a result, solus beverage purchases are significantly lower than the 32% figure noted above.

The data clearly shows that the dominant use of the premises has been and continues to be the sale of food, providing clear evidence that in planning terms the premises is a restaurant where the sale of alcoholic drinks is ancillary. It is clearly not a drinking establishment where the sale of food is ancillary nor it a mixed use given that food sales comprise around almost 70% of sales.

Ancillary Accommodation

As part of the operation of the Site as a restaurant, the unit features manager's accommodation which is solely let to the relevant manager on site, where operationally required. This unit cannot be let to a resident other than an employee of the Landlord, being Whitbread PLC, as confirmed by the submitted AST accompanying our submission. As such, the accommodation cannot be in use other than in conjunction with the operation of the Restaurant, and is not offered as a separate unit to the rental market. It is subsequently considered to be wholly ancillary in its use, to the Class E (b) Restaurant known as the Woodlands.

Conclusion

This application is submitted to formally confirm the established use of the premises known as The Woodlands as a restaurant within Class E. The application clearly and robustly demonstrates that the



premises have traded as a restaurant since at least 2013, with the sale of alcoholic drinks ancillary to the main use of the premises throughout this time.

Accordingly, we respectfully request that a Certificate of Lawful Existing Use for the use of the premises as a restaurant within Class E of the Town and County (Use Classes) Order 1987 (as amended) is granted without delay.

If there are any queries or you require any additional information, please do not hesitate to contact me.

Yours faithfully

