



Delegated Report

Lawful Development Certificate (Existing)

Planning Application No: 20211124

Location: Hayleys Of Higham 8 School Lane Higham Rochester

Description: Application for Lawful Development Certificate in respect of the existing mixed use classes E(a) retail bakery and E(b) hot food cafe.

Applicant: Mr Colin Smith

Site Visit Date: N/A Not required. Desktop Assessment.

Submitted Documents/Plans

- Existing Plan and Elevations (drawing ref 51-1); date received 01/10/2021;
- Site Location Plan (plan reference number TQRQM21256161024330), date received 14/09/2021);
- Non-Domestic Rate Bill, dated 19/03/2021, issued by Gravesham Borough Council.

Relevant Planning History

Application Ref. No.	Description	Decision
20040431	Change of use of shop to a hot food take-away with ancillary staff facilities at first floor level and installation of an external ventilation extraction duct on the rear elevation.	Refused
20030551	Retention of the shop front.	Approved
20030009	Change of use of shop to café in association with hot food take-away at 10 School Lane.	Refused
20010786	Change of use of shop to a hot food take-away with ancillary storage and staff facilities at first floor level.	Refused
20010289	Change of use of shop to a hot food takeaway with ancillary staff facilities and storage at first floor level.	Refused

Development Plan

As this is an application for a Lawful Development Certificate the matter is dealt with on the basis of an assessment of the available evidence; the issue of whether the use complies or not with the Development Plan does not apply in such circumstances.

The Law

The law relating to Lawful Development Certificates can be found in Sections 191 to 193 of the Town and Country Planning Act 1990 (as amended). For the purposes of this application the relevant section is 191, being a certificate sought for an existing use.

Other relevant sections of the Act are as follows;

- Town and Country Planning Act 1990, section 55;
- Town and Country Planning Act 1990, section 171A; and
- Town and Country Planning Act 1990, section 171B.

Consultations, Publicity and Representations

There is no statutory requirement to consult third parties. However, the application has been advertised by individual neighbour letters to 77 properties and the consultation period expired on 26 October 2021.

The Council received 77 comments in support of the certificate of lawfulness application, however, any views expressed by third parties are irrelevant in the determination of the application. The merits of this application relies on the relevant legislation.

Analysis

The application seeks to determine that the existing E(a) retail bakery and E(b) hot food café (food mostly to be consumed on the premises) uses are lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990 by virtue of the passage of time. Section 171B (3) of the Town and Country Planning Act 1990 prescribes:

‘In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach’.

In order to determine this application for a Lawful Development Certificate and in accordance with S171B of the Town and Country Planning Act 1990 (as amended), it must be established whether or not the application site has been in E(a) and E(b) uses for more than 10 consecutive years, i.e. prior to September 2011 when the application was validated.

Para. 6 of the Government Guidance on Lawful Development Certificates 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.’

Background

The submitted application form states the following;

*‘Hayleys of Higham has been a central part of the parade of shops and community for over 12 years, supplying locals with fresh bread and café offering traditional British fare. The use class E allows for change within the class but we would like confirmation this is lawful. In addition to this we are looking to make the cooking a safe environment **by the addition of an extraction canopy and associated plant**.’*

The assessment of this application will be addressed as a change of use. In lawful use applications, such as this, the onus is upon the applicant to provide evidence to establish that a material change of use has been carried out for more than 10 years. Although, as the applicant mentions, changes within class E are permitted, but the applicant seeks confirmation that uses as stated on the application form are in fact lawful.

In light of this, the evidence should clearly demonstrate that the use has been continuous and without a break within those 10 years. The number of years stated by the applicant within the application has no bearing in the assessment of this case.

Review of Submitted Evidence

With this in mind, the evidence submitted should be specific to ensure that it is clear exactly, to what the certificate would refer, and in deciding any certificate the Council must be sure on the balance of probabilities that the change of use has taken place for more than 10 years.

The quantum of evidence submitted with this lawful development certificate application (existing) is limited and comprises of the application form, a single Non Domestic Rate Bill issued by Gravesham Borough Council (dated 2021) and existing elevations of the site. Notwithstanding the evidence submitted, they do not explicitly demonstrate the site has been used for retail and hot food café (with food demonstrated as mostly consumed on the premises) has been continuous and without a break within those 10 years.

The Local Planning Authority (LPA) acknowledges the guidance states that if there is no available evidence, or any other conflicting evidence, then there is no good reason to refuse the application. However, in the event of this application, there is a lack of consistent evidence to demonstrate the site has been used, as the applicant maintains for E(a) and E(b) uses, in excess of 10 years. In this instance, the LPA has conducted as simple google maps street view to review the historical uses from the shop frontage.

Google maps provides historical street views of the site from 2008. The LPA does not assumed that the precise month dated on the street view can be attributed as entirely accurate, however, to err on the side of caution, it is assumed that the year of the street view photos are accurate. Therefore, from 2008 the application site is shown on google maps to as 'The Higham Oven Bake'. If zoomed in on the detailing of the shopfront, the shop front states it provides rolls, sandwiches, baguettes, freshly baked bread, hot and cold sandwich fillings, cream cakes, drinks.

In 2012, the site still appeared be in the same uses as stated in 2008. However, in 2019 there were changes to the shop frontage which states the shop operates as 'Bakers, Café, Sandwich bar & Tea Room'. Evidently in 2019, or thereabouts, there was a change in use of the site to accommodate the café/tea room provisions on site. Therefore, besides the hot/cold sandwich fillings provisions on site from approximately 2008, the LPA does not consider that the site has been consistently used as a café/tea room in excess of 10 years as the legislation stipulates. Although, the evidence for a sandwich shop existing at the site from before 2011 seems undisputed. Screenshots of google maps has been extracted below demonstrating the changes in frontages described from 2008, 2012, 2019 and 2021;

Google maps frontage 2008 and 2012



Google maps frontage 2019 and 2021



As noted above, the application form states there is an intention to install an extraction canopy and associated plant, although no other supporting evidence has been to demonstrate the details or location of the canopy/plant. Therefore, this application does not seek to address these matters relating to a canopy of any form of extraction plant.

Furthermore, in addition to the above assessment, the planning history at the site also indicates that a number of planning applications have been submitted at the site for hot food takeaways from 2001 to 2004 and in 2003 an application was made for a café. All these applications were refused at the site which has previously prevented hot food provisions at the site.

In light of the above, it is considered the elevation plans and the Non-Domestic rate bill do not provide sufficient evidence beyond reasonable doubt that the whole extent of the site has been used particularly for within E(b) hot food cafe use for a period in excess of 10 years prior to the date of this application.

Conclusion

Therefore, by examining the limited evidence submitted as part of the application and given the Council's own findings, it is considered, as a whole and on the balance of probability, there is insufficient evidence that the whole application site has been in continuous Class E(b) since September 2011, and as such in excess of 10 years ago, and is therefore unlawful.

Recommendation:

Refuse Certificate of Lawfulness – Existing Development

See draft Decision.

Case Officer:	Ms Genna Henry	Team Leader:	Richard Hart
Signed:	G. Henry	Signed:	<i>R Hart</i>
Dated:	22nd November 2021	Dated:	25th November 2021

Gravesham Borough Council