



Delegated Report

Planning Application

Application No:	20220597
Location:	The Amazon and Tiger, Harvel Street, Meopham
Description:	Application for a Lawful Development Certificate in respect of the continued use of part the of the public house as residential
Applicant:	Mr Michael Whitehouse

Submitted Documents/Plans

Application form
Revised site location plan
Revised block Plan
Drawing no. AT007 (proposed plan)
Floor plans
Council Tax bills
Statutory Declaration from Mr Whitehouse

Relevant Planning History

20220594	Application to vary condition 4 of approval 20140008 to allow the bed and breakfast accommodation to be used not ancillary to the existing pub accommodation.	Under consideration	
20140008	Erection of two storey side extension to provide bed and breakfast facilities.	Permitted	03.03.2015
20080347	Erection of first floor rear extension to form three bedrooms, ensuite shower room/wc and two ensuite wc's.	Permitted	18.09.2008
20030716	Erection of a conservatory on the southern side elevation.	Refused	08.10.2003
19950738	Retention and continued use of land as an extension to existing car park.	Permitted	20.12.1996
19910407	Retention of aviary at the side.	Permitted	11.05.1992
19890944	Display of internally illuminated	Refused	11.12.1989

projecting box sign at first floor level.

19890414	Erection of single storey rear extension to form a new cellar & utility room & conversion of existing cellar to enlarged bar area.	Permitted	25.07.1989
19880016	Erection of replacement cricket pavilion (revised scheme).	Permitted	19.04.1988
19860473	Erection of replacement cricket pavilion	Permitted	07.08.1986
19840755	Erection of extension at first floor level at side to form enlarged lounge dining room	Permitted	19.10.1984
19840532	Construction of dormer extension in the side roof slope of the rear extension	Permitted	20.07.1984
19800222	Outline application for the erection of 5 dwellings with garages fronting Harvel	Refused	29.05.1980
19800121	Erection of building for an equipment and implement store and score box adjoining existing pavilion	Permitted	22.05.1980
19790997	Erection of single storey extension at the side to form new toilets and erection of extension at rear to form staircase	Permitted	31.12.1979
19780702	Erection of a single storey extension at side to form enlarged bar facilities with toilets erection of two storey extension at rear to form private entrance and a bathroom and erection of single storey extension for beer store at rear alterations to external elevation erection of 2 porches and formation of car park.	Permitted	07.09.1978
19780398	Erection of single storey extension at side to form enlarged bar facilities with toilets and store erection of two storey extension at rear to form bathroom and erection of single storey beer store at rear External alterations erection of two front porches	Refused	22.06.1978

19580629	Erection of private garage to replace existing	Permitted	16.01.1959
19580051	Erection of dwellinghouse	Refused	13.04.1958
19500050	Erection of pavilion	Permitted	05.05.1950

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.

Consultations, Publicity and Representations

There is no statutory requirement to consult third parties. However, as this is an application for an existing use, the application has been advertised by letter to seven neighbouring properties and letter to the Parish Council.

82 letters from 64 different addresses.

45 letters of objection citing the following concerns:

- Should not be given permission to change to residential
- It is a community asset
- The residential element is ancillary to the pub and not separate. It has not been lived in as a separate residential accommodation for more than four years because it only closed 18 months ago.
- Meopham Parish Council submitted an application for the whole building to be protected as an Asset of Community Value which was approved.
- The residential quarters are only ever allowable to support the running of the pub.
- There is a strong desire by the local people to fight for their pub
- Application lacks detail/evidence
- A vicar doesn't close a church and live in it when they retire
- The brother in law is living in the B&B as the sole tenant.
- This application is nothing more than a cynical attempt to manipulate planning regulations for personal financial gain
- The owners have a moral duty to preserve the pub for the community
- The pub should be preserved for the community
- The residential accommodation has always been ancillary The ACV was granted on the whole building, not just the bar area
- Without the residential accommodation it will never re-open as a pub
- The overall aim is to convert the whole site to residential
- Loss of local amenity and ACV
- Moved to Harvel because of the pub.
- The family did the same with the village shop
- Not separate accommodation
- The declaration is not available to the public to see.
- The B&B has no kitchen facilities and it appears 20080347 was never implemented.

- The pub is needed by the community and has not been lived in independently
- The owner has openly admitted that he plans to get residential status for the whole building to increase its value.
- If the pub has no ancillary accommodation how can it be run as a pub
- Do not agree that the villagers did not support the pub
- Over time the applicants have added to the infrastructure of the pub to make it more viable. Locked doors will just be unlocked. The sole tenant of the B&B is the applicant's brother in law
- Never seen the door to the B&B locked. The tenant supplied the village with takeaways during covid so do not understand why it has closed
- Not enough evidence
- The B&B does not come up on an internet search
- This is an application to change the whole building to residential. Locked doors are not evidence enough.
- Publicans living within the premises on their commercial enterprise is normal. At no point in the past 10 years did the applicants try to differentiate between living accommodation and the public house
- The application form is incorrect
- Council tax should be payable regardless
- None of the layouts of previous applications make sense. The 2014 application shows 4 bedrooms for the B&B and the current plans show two.

19 letters of support:

- they have paid domestic rates on the flat for many years. They are valued owners who have helped the village immensely
- the owners have been kind and courteous to the whole community and should be allowed to stay in their home
- the number of visitors has dropped over the years and it makes sense to allow this building to be converted to domestic use
- few patrons left. The village cricket pitch has a licenced pavilion so there should be no loss to community asset if the pub is closed.
- they deserve to retire and live in their home. The B&B was never a problem when the pub was running so why is it now?
- They should be able to live in their own home
- pub was never busy, lack of housing in the area, reduces anti-social behaviour and drink driving

The Local Ward Councillors were also consulted and no responses were received.

However, as this is a lawful development certificate application, any views expressed by third parties are irrelevant in the determination of the application.

Procedural note

One objector has stated the following:

This application appears to contain incorrect information. Under section headed 'Reason for Lawful Development Certificate' the applicant has chosen option 'An existing use, building work or activity in breach of a condition', and under section headed Grounds for application for a Lawful Development Certificate' the applicant has chosen option 'The use, building works or activity in breach of condition began more than 10 years before the date of this application', and under section headed 'Information in support of LDC' the applicant has stated the start date for the activity to be 06/05/1995. This may well be the date the applicant started living here, but at this time the accommodation above the pub was being used in conjunction with running the pub. It did not start being used as a stand-alone residence until 12th April 2021 when the current landlord decided to close the pub.

It is not clear why the applicant has chosen this and not 'an existing use'. They have ticked the box marked 'no' to state that the certificate being sought for a use, operation, or activity in breach of a condition or

limitation and yet in their statement as to why a Lawful Development Certificate they say:

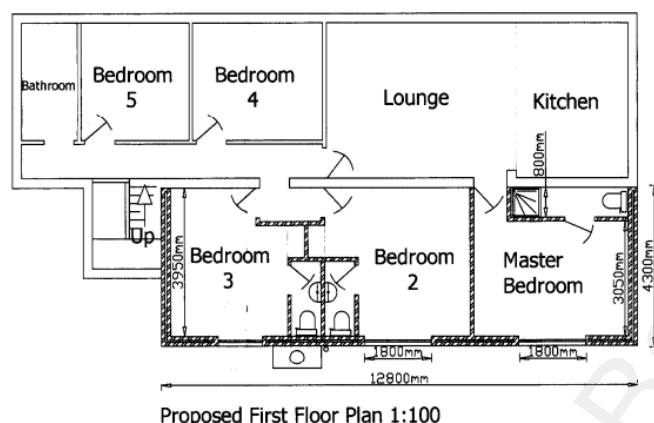
'The applicant's self contained C3 use is demonstrably separate from the Pub given the facts explained by the applicant in his declaration and above, and that has subsisted for well over the period required in law. His evidence alone is sufficient unless the LPA possesses contrary evidence, which given the council tax paid for residential throughout, and layout, seems highly unlikely. It was a breach of condition 3 to 20080347, but it is now immune. Consequently a certificate should be given.'

Condition 3 of 20080347 reads:

GR/20080347 Cont...

3 Bedroom 2 and 3 indicated on drawing no PDH/0179-05 dated 16 September 2008 shall only be used ancillary to the main use of the building and shall not be occupied as a separate planning unit without the prior approval of the Local Planning Authority in writing

Bedroom 2 and 3 are shown below:



It would appear from a site visit that this permission was never implemented and it is therefore unclear why this has been mentioned on the form.

The Statutory Declaration from the applicant forms part of the application however it was not made public initially. It has been noted that many of the objectors have raised concerns that this was not public. The statutory declaration is below:

STATUTORY DECLARATION

I, Michael Whitehouse, publican, of 'The Amazon and Tiger', Harvel Street, Meopham, Gravesend DA13 0DE, do solemnly and sincerely declare as follows:-

1. I have lived with my family in the self-contained residential accommodation ('residence') at the 'The Amazon and Tiger' public house ('pub') for 27 years.
2. The residence is self-contained because it has a separate access from the rear, it has a separate post box, and I pay separate council tax. Functionally it has no connection to the pub use.
3. I confirm that this declaration was produced by Solicitors instructed by me and is based upon what I have told them.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signed

Mr Michael Whitehouse

DECLARED at

this 6th day of May 2022

Before me

A Commissioner for Oaths/Solicitor

Address:

**Stantons Solicitors
24 Wrotham Road
Gravesend, Kent
DA11 0PA**

As it did not include anything that was not already in the public domain it is not considered that it put the public at a disadvantage when viewing the application.

Officer's Analysis

The application seeks to determine that the existing C3 use of part of the first floor (shown below) is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990 by virtue of the passage of time. Section 171B (2) of the Town and Country Planning Act 1990 prescribes:

'Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four 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 C3 residential use for more than 4 consecutive years, i.e. prior to 2018.

Para. 6 of the Government Guidance on Lawful Development Certificates (<https://www.gov.uk/guidance/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.'

Definition of Curtilage

The site location plan that initially accompanied the application outlined the entire site in red. This would indicate that that the whole site was in residential use which is not the case as the pub use ended in April 2021.

Article 30 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application for lawful development and how it must be submitted. In relation to identifying the land para. 39 says:

(2) An application to which paragraph (1) applies must be accompanied by—

(a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;

(b) such evidence verifying the information included in the application as the applicant can provide; and

(c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.

and para. (4) says:

Where such an application specifies two or more uses, operations or other matters, the plan which accompanies the application must indicate to which part of the land each such use, operation or matter relates.

The Guidance Notes for lawful development certificates state that:

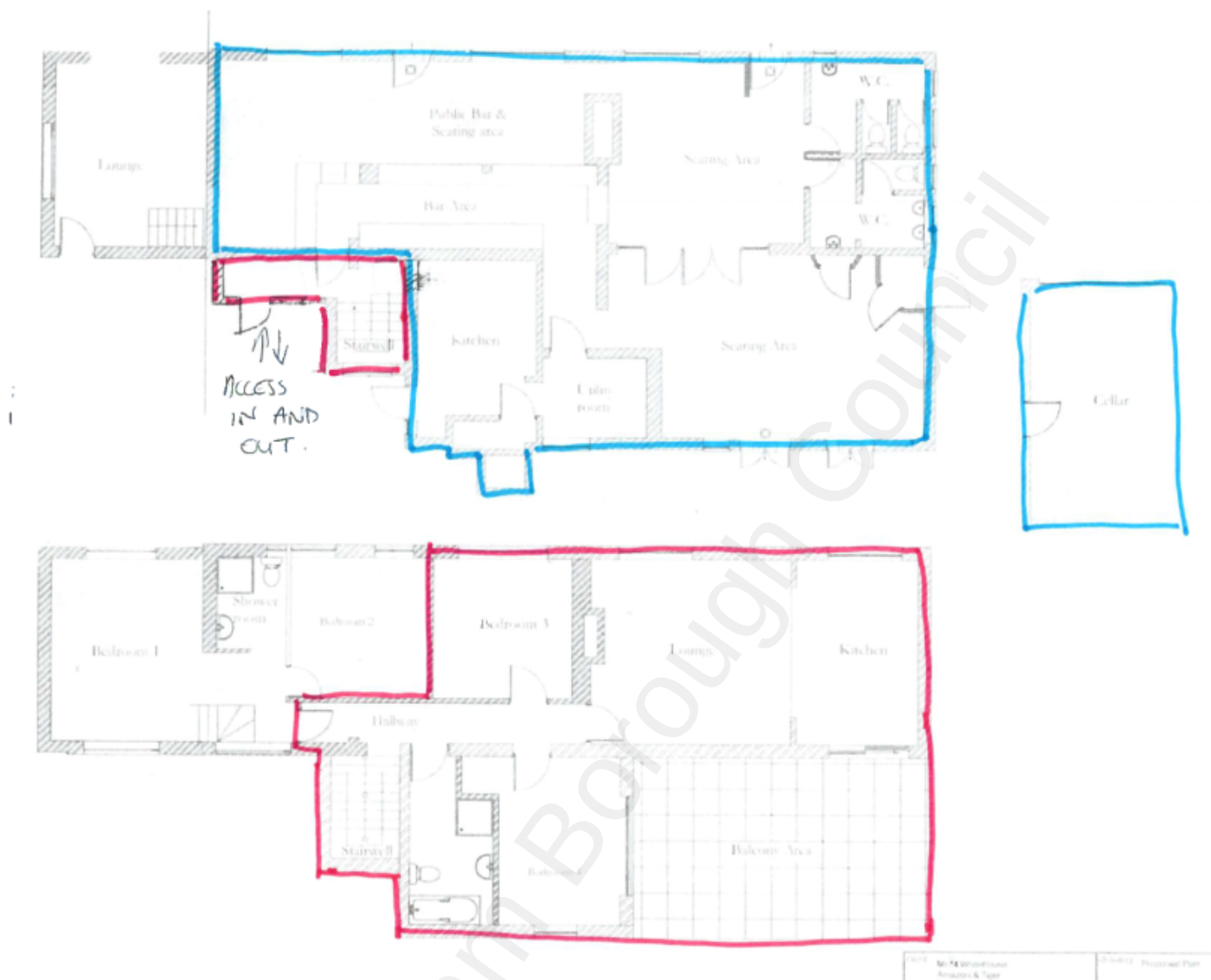
An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.

In terms of who is responsible for providing sufficient information to support an application the following is stated in the guidance:

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

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.

The applicant's agent was asked three separate times to supply a revised site plan outlining the site relating to the residential use. This was submitted on 23 September 2022 and includes an area to the rear that has been used as private garden space. The block plan supplied makes clear that the first floor (and garden) are the only parts relating to the application. The floor plans also clearly show that it is the entrance and stairs up to the accommodation plus the first floor that are considered residential:



Residential use

In terms of the use of the upstairs of the building as an independent dwelling this comes down to a matter of fact and degree. Public houses do not fall within a Use Class and are therefore 'sui generis'. Usually the residential accommodation is ancillary to the pub use. The only evidence that has been submitted in support of the use of the residential quarters as a separate dwelling is a statutory declaration and council tax bills. Upon visiting the site it was clear that the upstairs accommodation has its own entrance. There is also a door that is locked between the bar and the residential accommodation. The residential accommodation has its own post box independent to the pub and, internally, has all the functions required for self contained living such as kitchen, bathroom, lounge and bedrooms.

Changes in the disposition of normal pub activities within the curtilage of that pub do not require planning permission, provided that they fall within the same planning unit. For instance a pub car park may be changed to a beer garden or a pub cellar may be changed to a function room. These are cases where one pub related ancillary use is simply taking the place of another. In most cases the landlord's own accommodation will be included in this equation such as in Ipswich 13/7/1988 (appeals APP/R3515/A/87/69093 and 79791 and E/87/802737 – appendix 1). Here an inspector was of the opinion that absorption of the landlord's accommodation into the main pub use would not amount to a material change. However, if a flat over a pub is a self-contained unit, its use as a bar etc may be held to be a material change of use, even if the flat was traditionally associated with that pub, see Rhondda (A/70/KP/P – appendix 2).

In the first case the accommodation was deemed ancillary and therefore could be absorbed into the pub use and in the second case, it was considered self-contained and therefore could not be deemed as ancillary. Weight was therefore given to how self-contained the accommodation was. In the instance of the Amazon and Tiger, it is clear that the accommodation is completely self-contained and there is no reliance on the pub below.

Review of Submitted Evidence

The submitted evidence consists of council tax bills and a statement from the applicant. There is no dispute that council tax has been paid on the residential element of the building however, a public house would ordinarily be required to pay both business rates and council tax where the business is on the ground floor and residential above. The government website states that some properties are partly for business and partly for domestic use, so both taxes need to be paid and they use the example of pub or public house, or a shop where the publican or shop owner lives on the premises or in a flat above. Therefore the payment of council tax is not proof that the residential use is not ancillary to the pub use.

However, upon visiting the site, it is clear that the accommodation on the first floor has its own access and is capable of independent use. This is corroborated by the 2008 application that shows the floor plans as existed then which match which is on site now.

On the balance of probability, and in the absence of any evidence to the contrary, the first floor accommodation has been used as self-contained accommodation for more than four continuous years.

Asset of Community Value

The Amazon and Tiger was designated an Asset of Community Value under the Assets of Community Value (England) Regulations 2021 after a successful application by Meopham Parish Council on 13/05/2021. The reason for the ability for communities to list buildings as ACVs is because so many communities have lost local amenities and buildings. It gives communities the opportunity to identify assets of community value and have them listed and, when they are put up for sale, more time to raise finance and prepare to bid for them.

The provisions do not place any restriction on what an owner can do with their property, once listed, so long as it remains in their ownership. This is because it is planning policy that determines permitted uses for particular sites. However the fact that the site is listed may affect planning decisions - it is open to the Local Planning Authority to decide whether listing as an asset of community value is a material consideration if an application for change of use is submitted, considering all the circumstances of the case. In this case, the application is a matter of fact – is permission needed to use the accommodation as residential or not – and therefore its designation as an AVC is irrelevant.

Conclusion

Gravesham Borough Council is satisfied that sufficient evidence has been provided to conclude, that on the balance of probabilities, the application site being that of the first floor accommodation and the land identified on the site location plan has been used as self contained residential accommodation for a period in excess of four years. As such, it is exempt from enforcement action by reason of section 171B (2) of the Town and Country Planning Act 1990, as amended.

The use is therefore lawful by reason of section 191(2)(a) of the Town and Country Planning Act 1990 (as amended) and a Certificate of Existing Lawful Use can be granted.

For the avoidance of doubt the application site the subject of this certificate is shown edged in red on the attached plan.

Recommendation:

Certificate Granted

Case Officer:	Mrs Alison Webster	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	23 September 2022	Dated:	23 September 2022