



Delegated Report

Application for a Lawful Development Certificate

Planning Application No: 20240539

Location: Beefeater Restaurant The Woodlands 217 Wrotham Road Gravesend

Description: Application for an Existing Lawful Development Certificate for the continued use of the site as a Class E (b) restaurant.

Applicant: C/O Agent

Site Visit Date:

Submitted Documents/Plans

Application Form
Location Plan
Cover Letter
2011 Menu
2011 Menu (Part 2)
2012 Menu
2023 Menu
2023 Menu (Food)
2023 Brand Standards and Operating Guide
2004 Floor Plan
Licensing Plan
Photographs

Relevant Planning History

Reference	Description	Decision	Decision Date
2007002	Erection of single storey extension on the eastern rear elevation to provide additional restaurant area and provision of two jumberellas at the rear.	Permitted	08.03.2007
20060265	Erection of two storey front extension to provide twenty additional bedrooms and a link corridor to the main building.	Permitted	06.09.2006
20010249	Erection of a conservatory on the western elevation to enlarge the existing restaurant.	Permitted	29.05.2001
19970516	REVISED APPLICATION/AMENDED DESCRIPTION: Erection of two storey travel inn comprising of lobby, foyer, office w.c., linen room plant room, store and 16 no. bedrooms with ensuite bathrooms at ground floor with linen room, store and 20 no. bedrooms with ensuite bathrooms over and associated parking spaces and formation of new vehicular access.	Permitted	06.02.1998
19950375	Erection of detached shed at rear to form barbecue enclosure.	Permitted	07.08.1995

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.	Permitted	01.08.1995
19830569	Alterations to the front elevation and erection of a canopy at the side	Permitted	06.10.1983

Commented [LF1]: Other apps for similar: Stevenage 24/00414/CLED - Approved 08.08.24

Commented [LF2R1]: Welwyn Hat: 2024/1110/LAWE - Granted

Commented [LF3R1]: Worcester: 24/00413/CLE - Approved

Material Consideration

- Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended);
- The Town and Country Planning act 1990 (as amended); and
- The Use Classes Order 1987.

This application is for a Lawful Development Certificate and not a full planning application. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proof and relevant facts rests with the applicant and the evidence submitted must be sufficiently precise and unambiguous to enable the Local Planning Authority to understand exactly what is involved. The decision must be made on the balance of probability. The case officer has had regard to the advice contained in the National Planning Practice Guidance (paragraphs 005 to 009).

Sections 191(2) and (3) of the Town and Country Planning Act 1990 (as amended) relates specifically to the determination of LDC applications and sets out what is considered to be lawful;

191(2) 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.

191(3) for the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if-

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach or condition notice then in force.

References to Sections 171B(1)-(3) of the Town and Country Planning Act 1990 (as amended) sets out the time periods for taking enforcement action relating to different types of unauthorised development;

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of;
 - (a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and
 - (b) in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed.
- (2) 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;

- (a) in the case of a breach of planning control in England, ten years beginning with the date of the breach, and
 - (b) in the case of a breach of planning control in Wales, four years beginning with the date of the breach.
- (3) 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

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. One letter on behalf of the Campaign for Real Ale has been received making the following objection as summarised:

- Whitbread plc has closed 115 of its pubs that lie adjacent to Premier Inns, indicating that they wish to integrate the premises into the adjoining hotel by making them resident-only, or converting them to hotel accommodation or both.
- These pubs are drinking establishments first and foremost since they opened and have never been a restaurant. The distinction being that in a pub you can buy a drink without a meal, whereas in a restaurant you usually need to buy a meal. The woodlands has always operated as the former, where drinks alone can be purchased at the bar.
- Since 2020 pubs have been in Sui Generis use, meaning that any change of use requires planning permission. Pubs also enjoy a significant level of protection under both national and most local planning policies. Changing the use from a restaurant to another use is easier than if the use were a pub, which is the likely intent of this application.
- Although the applicant argues that the certificate should be granted because the majority of the business has been the sale of food, in this day and age, that applies to many food-led pubs and accepting this would lead to a dangerous precedent.

Officer's Analysis

There are two main issues presented by this application; firstly does the current use of the building constitute use as a 'restaurant' and secondly does the current use of the building require planning consent given the length of time since it has been built?

Use Classes

The Use Class Order was amended in August 2021 by consolidating many uses and shifting some uses into different classes.

Prior to 2021, as restaurant or café was classed as A3, and a pub or drinking establishment as A4. Post 2021, restaurants now fall within Use Class E of which there are numerous sub categories. The most

relevant to be considered as part of this application is Use Class E(b) where food and drink is sold and mostly consumed on the premises. Class A4 (pubs/drink establishments) have been moved to Sui Generis, either sub category (p) being a public house, wine bar or drinking establishment, or (q) which is a drinking establishment with expanded food provision.

This application seeks confirmation that The Woodlands, Wrotham Road, Gravesend falls within Use Class E(b) – where food and drink is sold and mostly consumed on the premises.

Evidence presented

The planning agent for this application, has detailed in the covering letter that The Woodlands (Beefeater) restaurant has offered an extensive food menu for more than 10 years. Food is currently available continually from 11:30 until 22:00. Various beefeater menus have been provided for the years, 2011, 2012 and 2023. Additionally, trading dates showing the food/drink split for each year between 2013 and 2024 has been provided. This table is included below for reference. It is noted that the covering letter advised that the drinks figure includes drinks purchased in conjunction with a meal and so drinks bought alone would be a lower figure;

	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%

It is important to note that the premises has a restaurant and a car which operate as one, through one main entrance and the restaurant does not operate without the bar, and vice versa.

Case Law

A licensed bar at a restaurant is normally considered to be an ancillary use, particularly as Class E, includes uses for the sale of food and drink for consumption on the premises. However, the use of a premises as a public house is sui generis.

The point at which such a restaurant bar use becomes a primary pub use in its own right is often difficult to establish, so the relevant case law can assist in ensuring that a consistent and methodical approach can be undertaken across the board.

Nonetheless, in basic terms, it is clear to see from the floorplans that the premises is predominantly as restaurant, with a comparatively small bar area.

In appeal ref ENA-260-2108 (APPENDIX 1) when considering an appeal against an enforcement notice in Glasgow, for the unauthorised use of restaurant (C2) as public House (Sui Generis), the Inspector dismissed the appeal. They assessed that; although the business did include serving of hot food to eat on the premises, food preparation on the premises, and advance booking for meals for large groups, this was outweighed by characteristics more readily associated with a public house including; a drinks bar, bar stools, two dart boards, a dance floor, live music programme, lack of tables laid out for food and evidence of drinks purchased without food.

Alternatively, in appeal reference APP/Z1510/C/22/3290978 (APPENDIX 2) the Inspector dismissed an appeal against an enforcement notice issued by Braintree District Council for a material change of use from a Public House to a restaurant. In this instance, the inspector stated that:

'In my experience, public houses generally allow patrons to drink without needing to order food. Although tables may be laid for food, there are usually seating areas where patrons can simply drink. As a consequence, public houses offer a relatively informal space where people can meet and are often seen as playing an important role in terms of the community.'

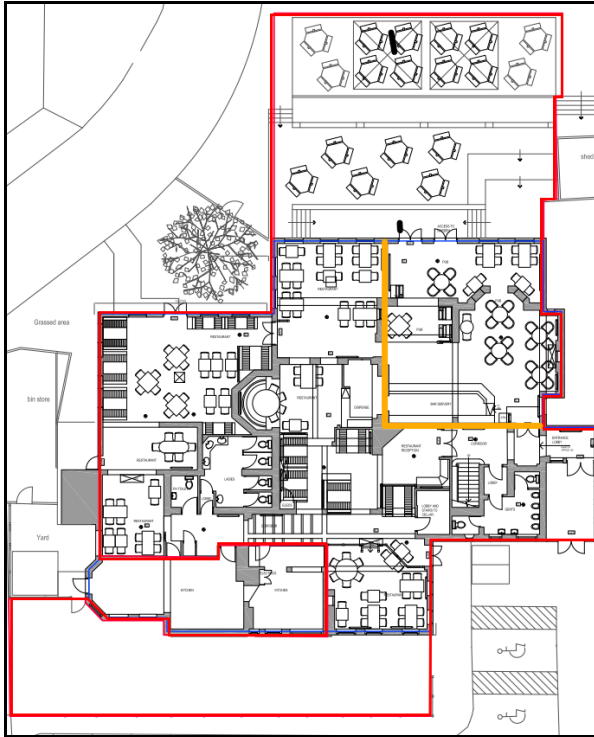
A restaurant, by contrast, is defined as by the OED as 'a place where people pay to sit and eat meals that are cooked and served on the premises.' Pre-booking is often required and although patrons can consume drinks, they are usually served in addition to food. A restaurant is likely to draw customers from a wider area and although locals may well still use the premises, the frequency with which they attend is likely to be less due to the cost involved in purchasing a meal. Its importance in terms of the social interests of the local community is therefore likely to be much less.'

In the above case, the Inspector considered that the majority of tables were laid out for dinner, with tablecloths, cutlery, folded napkins, side plates and wine glasses. There were two bars' stools and one unladen table near the bar. The inspector states that in such a setting, those visiting would likely perceive it to be a restaurant and would be unlikely to visit simply to order a drink. They also stated that while the bar may be fully stocked and in its original historic position, there is no substantive evidence to show that the premises serves standalone alcoholic beverages to those not wishing to have a meal. In summarising, the Inspector found that on the balance of probabilities based on the facts that the material change of use had occurred.

Gathered evidence and assessment

In the aforementioned appeals, it is accepted that a public house generally allows 'patrons to drink without ordering food'. However, as per the appeals, the provision of food, does not preclude the use from being a 'public house' and likewise, customers in a restaurant may consume drinks only, although they are usually served in addition to food. It appears that public houses have had to diversify, and a number of public houses do now serve food and so the assessment as to whether there has been a change of use from the former public house to a restaurant is not a simple matter to consider. Matters considered in addition by the appeals included; pre-booking systems, table layouts, bars, barstools, pub games (dartboards), dancefloor, live music programme etc. It stands to reason therefore that a similar assessment would be needed in this instance and whether the change of use has taken place will be a matter of fact and degree.

In this instance, it was not possible to visit the site to see how it is being used as the business has closed. However, the planning history; including historical floor plans and internal photographs have been provided by the planning agent to assist in this assessment. The floorplans provided show that the building has a singular main entrance. The Licensing Plan 'Existing' (Assumed to be in 2015 as this is when the plan is dated) shows that upon entering the building the 'Pub' area is accessed by turning right and the 'Restaurant area is accessed by going forward to the 'Restaurant reception'. It is noted that this layout changes on the proposal but the access points remain the same and the area previously described as pub is unlabelled on the proposed plan (From 2015). The building appears to have been part used as a restaurant and part used as a pub at this time. However as mentioned above, the restaurant area is much larger than the pub area. The below plan shows the division of the layout by an added orange:



This area is still served by a bar, whereas those purchasing food in the restaurant area would order at the table. Internal photographs provided by the agent show some distinct differences to the area's:



This area shows the bar in the distance, with a fruit machines to the left of the image. The table is not set for food and there is a drinks menu on the table. The access to the garden is to the furthest left of this image.



This image shows tables set for food, including cutlery, napkins, multiple menus, salt and pepper, with decorative items, which would be expected of restaurants on the walls and brightly coloured furniture.



The garden area is shown above.

It appears based on the assessment of facts that the two areas of the site have distinctly different characteristics, and it is likely that the area originally highlighted as 'pub' is used for service of drinks only based on its appearance, layout and direct access to the garden. However food can be eaten at these tables. But the larger remainder of the building has clear characteristics of more formal restaurant use.

To reiterate, 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.

The application needs to prove that the use of the site has been used for the sale and consumption of food and drink for 10 years or more. On the balance of probability, and based on the history of the site, the layout, the characteristics whereby the main use of the site is as a restaurant and a smaller section of the building used for drinking purposes, the premises clearly fall within Use Class E(b) for the sale of food and drink consumed on site, with the restaurant being the larger portion. It is not considered that the premises should be considered under Sui Generis (p) or (q).

Time Limit for Enforcement

The Planning and Compensation Act 1991 provide time limits in which the LPA can take planning enforcement action against development. In this case, the time limit would be 10 years.

It has been established that the use of the site is E(b), it must also be proven that this has been the situation for 10 years or more. Evidence has been supplied which includes extensive food menu's dating back to 2011 and sales data of a greater proportion of food to drinks, back to 2013. The planning application 20010249, decided on 29.05.2001 also identified the building as a 'restaurant' in its description, detailed again below for information:

Reference	Description	Decision	Decision Date
20010249	Erection of a conservatory on the western elevation to enlarge the existing restaurant.	Permitted	29.05.2001

Based on the substantive evidence, it is concluded that the building has been used as Use Class E(b) in excess of 10 years.

Conclusion & Recommendation

It has been established that the site has been in use under planning use class E(b), in excess of 10 years. The Local Planning Authority can therefore not take planning enforcement action against this use.

(For detailed conditions / reasons for refusal and informatives, see draft Decision)

Case Officer:	Mrs Lisa Fisher	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	12 th August 2024	Dated:	12 August 2024