

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20220668
Location	17 Overcliffe Gravesend Kent DA11 0EF
Proposal:	Application for a Lawful Development Certificate in respect of the continued use of the of the former restaurant as a single residential dwelling.
Applicant:	Mr Anmol Kataria
Site Visit	N/A Desktop Assessment

Plans & Documents

Application form
 Supplementary Sworn Affidavit
 17LR/A3/04 (existing and proposed block plans)
 17LR/A3/02 (proposed ground and first floor plans)
 17LR/A3/01 (existing ground and first floor plans)
 17LR/A3/05 (site plan)
 17LR/A3/03 (existing and proposed elevations)

Property Type

The property comprises a two storey detached property within the Overcliffe Conservation Area.

Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Relevant Planning History

20150682	Replacement of window at ground floor level on the front elevation.	Permitted	14.10.2015
19810582	Change of use of restaurant at 1st floor level to a store and use of basement as a winebar	Permitted	22.07.1981
19790915	Erection of single storey rear extension to form enlarged restaurant	Permitted	07.03.1980

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 three neighbouring properties. No letters of representation have been received.

Officer Assessment

The application seeks to determine that the existing C3 use of the building 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 (3) 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 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.’

17 Overcliffe was once a restaurant however, it is clear from google street view images that this has not been the case since before 2008. It would appear that the restaurant use has ceased and the space to the front of the building has been used as a car park. The applicants advise that the restaurant closed over 15 years ago.

Evidence

The applicant has provided a statement from a neighbouring property that says that the restaurant use ceased 7-10 years ago. Since then the then owner lived alone in the property as a residential dwelling.

An email has also been received from the hotel adjacent to the site confirming that the restaurant ceased at least 10 years ago and its only occupant was an elderly man who lived alone and passed away last year.

Whilst it is not disputed that the restaurant use has ceased, there is not sufficient evidence from these statements that the whole building has been used as a residential dwelling for the last four years.

The property was advertised for sale in 2018 and photos are archived on the Zoopla website. The property is described as previously being a Mexican Restaurant and the photos included on the website show bedrooms, a lounge and kitchen/bathrooms. It would appear from these photos that the first floor has always been in residential use and the downstairs has not been used as a restaurant for many years. The ground floor pictures show the commercial kitchen and the remainder of the property as storage for restaurant paraphernalia. There is nothing in the pictures to suggest that the downstairs has been used as a residential home. The chairs from the restaurant and various other equipment is all shown in these photos from 2018, less than 4 years ago. In addition to the above the applicant has not owned the property for a sufficient length of time to be certain of the use.

Ground floor:



The kitchen appears to still be intact:



The property was also registered for business rates until December 2020 when the property was sold to the current owner.

The Council's Environmental Protection department have confirmed that the property was a Mexican restaurant called Mexxa Mexxa around 20 years ago and closed a few years later. The food inspection records go back to 2006 and there is no record of it. The Council did receive a new food business registration

form for a business called Purani Delhi in March 2021 (since the current owner purchased the property) but it never opened. The google image below shows that a new resaurant was being advertised as recently as April 2021;



There appears to have been an intention to re-open as a restaurant when the current owners first purchased the property.

Conclusion

The ground floor of the building is reflective of an empty restaurant/commercial premises which has not been actively altered to residential within the last 4 years. There are also two addresses associated with the property; 17 Overcliffe and Flat above 17 Overcliffe which indicates the property has been separated. The evidence submitted is not sufficient to prove that the entire building has been in full residential use for the last 4 years particularly as the owner has only owned the property since 2020.

On the balance of probability, the use of the whole building known as 17 Overcliffe shown on the site location plan is not in residential use and has not been for more than four years. Therefore a certificate of lawful development cannot be issued and a planning application is required to be submitted.

Recommendation: Refuse Lawful Development Certificate

Case Officer:	Mrs Alison Webster	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	23 January 2023	Dated:	24 January 2023