



Appeal Decisions

Inquiry Held on 3, 4 & 12 August 2021

Site visit made on 5 August 2021

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 17 February 2022

Appeal A: APP/Y5420/X/21/3266719

Maid of Muswell, 121 Alexandra Park Road, London N10 2DP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mitchells & Butlers Retail Ltd against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2020/0009, dated 5 December 2019, was refused by notice dated 28 January 2020.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is 'the use of the rear garden by customers, as part of, and ancillary to, the operation of the licensed premise' the description on the appeal form is 'the use of the rear part of the site for use as a customer garden/terrace contrary to condition 5 attached to permission HGY/32637'.
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Appeal B: APP/Y5420/X/21/3266720

Maid of Muswell, 121 Alexandra Park Road, London N10 2DP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mitchells & Butlers Retail Ltd against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2020/2906, dated 12 November 2020, was refused by notice dated 15 December 2020.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is 'the use of the rear part of the site, as shown on drawing MC718-201, for refuse/bin storage and as a customer garden/terrace ancillary to the lawful use as a licensed premises, contrary to Condition 5 attached to permission HGY/32637 (and now applying to the current use of the site through permission HGY/2003/1677)'.
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Decisions

Appeal A

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Appeal B

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Costs

3. An application for costs was made by the appellant against the Council of the London Borough of Haringey. This application is the subject of a separate decision.

Description of development

4. There was discussion at the Inquiry about what was being sought by the appellant. The appellant suggested that the following description should be considered for both Appeals A and B:

'Certificate of Lawfulness in respect of the use of the rear part of the site for refuse/bin storage, staff breakout area and as a customer garden/terrace, ancillary to the lawful use as a licensed premises (pursuant to permission HGY/2003/1677), contrary to Condition 5 attached to permission HGY/32637.'

5. This description implies that the permission implemented was the latter one granted under s73 and reverses the sequence to that set out in the description for Appeal A. I understand from the evidence that planning permission HGY/32637 was implemented and that some years after the implementation of that permission, an application under s73 to vary condition 3 of the original permission was submitted and granted under reference HGY/2003/1677. I will address this below.

Background

6. The Maid of Muswell (MoM) is a public house, situated on the corner of Alexandra Park Road and Grosvenor Road. The two storey building is set back from the roads with seating on hard surfacing to the front, side, and the rear area. There are bin storage areas within the identified rear area the subject of the appeal. The rear area adjacent to 1 Grosvenor Road, is the area the subject of the appeals and is hatched red on drwg no MC718-201.
7. Planning permission was granted in July 1986 (reference HGY/32637) (the original permission) for a change of use to Licensed Premises and erection of a rear extension. It was subject to a number of conditions. The plans of the premises approved by the permission show that the rear area was labelled 'garden to first floor flat'. The implication is that the building contained an ancillary flat for persons running the licensed premises and ancillary to it. The use of the rear garden area was therefore intended for the private use of the occupiers of the ancillary flat. There was no definition of what was meant by 'Licensed Premises' within the condition.
8. Condition 5 of the original permission stated:

"This permission does not include the use of the rear garden associated with the licensed premises.

Reason: To ensure the permitted use does not prejudice the enjoyment of the neighbouring occupiers of their properties."

9. Conditions 2-4 respectively sought to control hours of use, the playing of amplified music and the detail of extract fans and refrigerator units.
10. The wording of condition 5 is less than clear and it can be read in a number of ways. This was emphasised by the appellant in closings, where five ways of interpreting the condition were set out.
11. I find that while condition 5 refers to the rear garden it does not define any area within the application site of the permission as the rear garden. The labelling on the plan does not use the term 'rear garden'. This is a significant error in the drafting of the condition as it is imprecise as to what area of the site the wording of the condition should be applied to.
12. The parties agreed that the extent of the planning application site reference HGY/32637 was the building and the external space around the building. The parties concur that the application site is the same as the planning unit for the MoM. The use of the land around the buildings can therefore be used for the primary use i.e. licensed premises or a use ancillary to that primary use unless it is specifically restricted by the imposition of a condition.
13. Moreover, the wording of condition 5 does not restrict any use of the undefined rear garden area. It does not prohibit anything; it merely states that what is being permitted does not include the use of the rear garden associated with the licensed premises. The use of any of the land surrounding the MoM and within the red line of the application site is not a primary use in its own right but ancillary to the use mainly taking place within the building.
14. Finally, the use of the term '*associated with the licensed premises*' is not defined or clear. The residential flat at first floor level was accepted by the parties as being ancillary to the primary use of the site as a licensed premises. Therefore, the use of the undefined rear garden area by occupiers of the ancillary flat to the licensed premises was inevitably associated with the licensed premises. Even if I accepted that the Council were seeking to restrict the use of some area at the rear of the premises to use by the occupiers of the residential flat on the first floor, the condition does not actually set that out in a clear and precise way.
15. Moreover, it is a negatively worded condition stating what the garden cannot be used for rather than what is permitted. Both the Council and the appellant accept that the land the subject of the appeals is part of the planning unit of the MoM.
16. Condition 5 may be read as simply stating that the permission does not extend to the rear garden. However, that area is clearly part of the planning unit and therefore may be used without permission for purposes ancillary to the permitted use. If the intention of the condition was to require the use of the rear garden as a private garden for the ancillary residential unit within the building it fails to state that. Condition 5 does not include any actual use that the land can be put to but does prevent its use *associated with the licensed premises*. As such it could be interpreted as the rear garden having a nil use while still being within the planning unit. The residential flat is ancillary to the licensed premises and therefore the use of the garden area would always be ancillary to the licensed premises. As such, the condition is contradictory and not clear on its face.

17. In my view, Condition 5 is so imprecise and uncertain as to be invalid and unenforceable. However, if I am wrong in my understanding of the condition and its limitations, I have dealt with that below.
18. An application for a variation of condition 3 of planning permission HGY/32637 to allow the playing of low, piped music within the public house was granted on 26 November 2003 (reference HGY/2003/1677). One condition was imposed on that permission relating to amplified sound or music. This was an application under s73 of the Act and as such it constituted a fresh grant of planning permission. As neither party raised this at the Inquiry, I have taken the pragmatic view that the other conditions of the earlier permission should be read as being incorporated in the later permission, notwithstanding that current guidance in the Planning Practice Guidance indicates that all of the conditions that continue to have effect should be re-stated in the interests of clarity. I will therefore deal with both Appeal A and B on the basis of the following description:

'Certificate of Lawfulness in respect of the use of the rear part of the site for refuse/bin storage, staff breakout area and as a customer garden/terrace, ancillary to the lawful use as a licensed premises contrary to condition 5 of permission HGY/2003/1677 (incorporated from planning permission HGY/32637).'

In my view, this change to the description of the existing uses the subject of Appeals A and B would not cause injustice or prejudice to either party.

19. A breach of condition notice (BCN) was issued on 6 October 2020. A judicial review was launched in respect of the BCN. Permission to apply for Judicial Review was granted on three of the four grounds pursued. A stay to those proceedings was granted to allow Appeals A and B to be determined.
20. The BCN required compliance with Condition 5 of planning permission HGY/32627. It goes on to state that this is achieved by not using the rear garden associated with the licensed premises for the serving, seating, entertainment of customers and any other activity associated with the use of the licensed premises.
21. The BCN makes no reference to the subsequent planning permission HGY/2003/1677. However, it was in place at the time of the application for Appeal B.
22. The BCN only refers to planning permission HGY/32637 and condition 5. However, in my view the latter planning permission HGY/2003/1677 was implemented. While I accept that condition 5 remains in place the licensed premises are operating under planning permission HGY/2003/1677. As such, I consider section 191 (3)(b) is not engaged as the BCN does not refer to the later implemented planning permission.

Main Issue

23. Whether, on the balance of probabilities, the use of the land identified with red hatching on drwg no MC718-201 has been in use for refuse/bin storage, staff breakout area and as a customer garden/terrace, ancillary to the lawful use as a licensed premises contrary to condition 5 of permission HGY/2003/1677 (incorporated from planning permission HGY/32637) for a period of at least ten years and that the uses are lawful.

Reasons

Appeal A and Appeal B

24. The issue is not whether there has been a material change of use but whether there has been use of the land identified by the red hatching on the drwg no MC718-201, for refuse/bin storage, staff breakout area and as a customer garden/terrace, ancillary to the lawful use as a licensed premises for a period of ten years or more and that use has been continuous. Or put another way whether the local planning authority would have been able to take enforcement action at any time during the relevant period. This is the issue whether or not condition 5 is enforceable. As set out above, I consider that condition 5 of planning permission reference HGY/32637 continued to have effect in the subsequent planning permission granted under reference HGY/2003/1677.
25. I have also considered the evidence on the basis that, if I am wrong about the interpretation of condition 5 and someone were to be very benevolent in seeking to derive a meaning for the condition, whether or not the breach of that condition was immune from enforcement action. This requires that the appellant is able to demonstrate a breach of condition 5 for over ten years from November 2003 and that the breach was carried out continuously such that, at any time in the relevant period, the local planning authority could have taken enforcement action against the breach of the condition.
26. The test of the evidence is on the balance of probabilities. The relevant 10 year period is any period of 10 years starting from the date of the first breach of planning control. The relevant period must relate to a 10 year period after the granting of permission HGY/2003/1677 in November 2003, as that was a fresh grant of planning permission for the licensed premises and is the permission the premises are operating pursuant to now.
27. All oral evidence to the Inquiry was under affirmation.
28. Aerial photographs although not always clear in detail on the copies held as part of the appeal file, indicate that the area of the appeal was laid out as a seating area. Due to concerns over the quality of the images when printed or within the submitted evidence, during hearing of the evidence I was taken through the images on my computer and noted the following:
- 4 September 1999 poor quality photograph but it was possible to imply a rear garden area for the appeal area.
 - 1 January 2002 blurred image with less vegetation. Four or more tables within the area.
 - September 2002 there was less vegetation present than in 1999. Two 'A' frame tables and a round table were visible and the area was hard surfaced.
 - 1 January 2006 four large 'A' frame benches and tables within the area.
 - 12 August 2006 significant vegetation but three tables could be seen.
 - 27 June 2010 very grainy image. Implied surface to area.
 - 7 May 2018 tables clearly present.

- 29 June 2019 tables clearly visible alongside vegetation.
- 24 March 2020 Parasol and tree cover. Terrace at 1 Grosvenor Road on top of what was the garage visible.
- 4 May 2020 chairs etc in area and bin area visible.

The aerial photographs, in my view, demonstrate that the appeal area has not materially changed in layout since at least 1999. In 2006, after planning permission HGY/2003/1677 was granted, tables remained within the appeal area. I accept that the area of landscaping appears wider in some and cut back in others. However, the aerial photographs do not show any significant changes in the layout of the area over the periods covered by the aerial photographs.

29. In 2006 the Officer Report relating to an application to vary condition 2 (reference HGY/2006/1165) records that despite condition 5 of the original permission, the space was being used and was occupied by about four tables and can accommodate perhaps 20 people. The application was refused.
30. Statutory declarations and oral evidence of a number of witnesses has been provided as part of the appellant's case. The summary of the main witness's evidence for the appellant from both statutory declarations and oral evidence are as follows:
 - Mrs Terry Jacobs was the manager of the MoM from December 2010 to October 2017 and lived in the flat on site. Her evidence states that the area hatched red on drwg no MC718-201 was used for storage of bins, staff breakout area and by customers during this period. Staff used the area daily. The area was used by customers for the same period as the trading hours of the MoM. Smokers used the area throughout the year, including winter and at Christmas. In 2015/16 the fence to this area was damaged and during the repair of it adjacent trees and undergrowth were removed. Her evidence was that Mr Ayres moved in to 1 Grosvenor Road in late 2015/early 2016 and she voluntarily introduced a policy of closing the appeal area by 10.30pm to address his concerns. There was no separate control in the premises license for this area. She also produced emails from Mr Ayers complaining of the use of the area in June 2017. These emails confirm the use of the raised beer garden close to No 1 in June 2017. Mr Ayers stated in the emails that he owned his property for 13 years, having come back to the house last year i.e 2016 after living elsewhere for 6 years, recording *'the beer garden has never been as noisy as it is now.'*
 - Mrs Jelena Voronocova took over as manager of MoM in 2017 from Terry Jacobs and is still the manager. Her evidence confirmed the appeal area has always been available for use by customers. Since she took over as manager the appeal area is closed by 10pm and customers asked to move to other areas. She dealt with complaints by Mr Ayers about the use of the appeal area, the times it was open, concerns over deliveries and refuse vehicle visits. The appeal area was closed to customers on three occasions. The first in 2019 following a visit from the local planning authority enforcement officers her staff closed the area for a few days, and certainly less than a week. The second was during a

week-long refurbishment in early 2020 when the whole site was closed and the third was during the lockdown for the Covid pandemic.

- Ms Janice Mary Harmond Williams provided evidence of knowing the MoM since 1997 and attending regularly from 1999. She attended most days from 2010 to the present day. She confirmed the layout of the appeal area had always been as depicted on drwg MC718-201 and contained benches, tables and seats and was always available to customers. Her oral evidence was she moved into the area in 2010 and had frequented the garden area in 2007/8 with her children. After 2011 she frequented the MoM 2/3 per week. Before that she visited less frequently and lived close by. She acknowledged the blackboard was used to limit the use of the rear garden in the evening. She visited in summer and winter and used the area in October/November. She gave oral evidence that people were 'out there' at any time of the year. Her evidence was that she did not remember the area being closed following the storm.
- Mr James Mulvey has been a regular of the MoM since moving to the area in March 2007. He used the area in drwg MC718-201 with his children and when smoking. He confirmed that the appeal area more recently closed at 10pm with customers moving elsewhere. His oral evidence confirmed he knew the premises since 2007. The bin area had always been there. Blackboard stated closing time of the area as 10pm. He visited at least once a week during the daytime at weekends with his children (2007 to 2016) and for quiz night/Friday nights. The area is quieter through winter but still used. Numbers using the area varied with weather. No experience of the area being closed off. The pub was not shut during refurbishments until pandemic in March 2020. The area was used and crowded every fireworks night and busy in early spring. The usage was skewed to weekends when the pub was busy people would go there for space.
- Denis Turner knew the MoM before it became a licensed premises. Since his retirement he attended the MoM most weekday lunchtimes or afternoons. He confirmed the appeal area had been laid out and used as a customer terrace for at least 20 years.
- Emma Thomas works for the appellant and provided evidence mainly in relation to speakers and staff.
- Nikki Finch has known the MoM since 1987 attending initially a couple of times a month and since 2011 almost every day. She confirmed the layout of the appeal area was as shown on drwg no MC718-201. Although she chose to sit outside at the front of the public house when busy she would sit in the appeal area. She confirmed the appeal area had been available for use and been used by customers since she has known the premises.
- Ms Soulla Katsiani moved to the local area in May 1986. The garages adjacent to the pub burnt down in the 1990's and were replaced by houses. In 1993 she visited the pub with her cousin. Following the birth of her first child in 1995 and youngest in 1999 she frequently visited the pub with her children and friends. She stopped frequenting the pub regularly in 2006-7. Her evidence was that the area identified on drwg

no MC718-201 had always been laid out as shown and was available for use.

31. Two local residents provided evidence in relation to the use of the appeal area. In relation to Mr Ayres, he moved into the adjacent house, 1 Grosvenor Road, in 2002. He gave oral evidence that between 2002 and 2012 the staff used the area for lunch and cigarette breaks. He stated there was a change in 2012-2013 to the use of the area. In spring 2013 the area was opened up to patrons. In 2017-2018 the landlady opened the area up to patrons all year round. Functions were held in the rear garden area. He could not remember if staff used the area. Mr Ayres was not living at the property between 2009 and 2015, his son was in occupation, and he visited weekly. He moved back to the property in 2015. A letter dated 17 January 2020 stated, *'I understand from a neighbour that around 5 or 6 years ago the pub management started using the beer garden April through October'*. In oral evidence Mr Ayres stated he wrote the letter in haste and saw it for himself. In an email dated 30 June 2017 he records that he had owned the house for 13 years, had lived elsewhere for 6 years and the beer garden has never been so noisy and in the past used to close at 10pm. He confirmed that furniture was out in the appeal site as there was nowhere to store it. In oral evidence he stated that the blackboard prevented access through the winter to the area. No other oral or written evidence supported this contention and references to the blackboard use was only in relation to closure of the area at 10pm.
32. His email complaints to Ms Jacobs indicate that the beer garden, which I take to be the appeal area, had been used for some time and it was the noise in 2017 and the time it was in use that was the issue. The email does not indicate that the beer garden use was a new use of the area.
33. Mrs Beaumont moved in opposite the appeal site in 1991 and was aware of patrons using the rear area. She stated that bedrooms, bathrooms, and a living room overlooked the area from her property. In 2006 she objected to the extension to opening hours application. She was aware of the rear area being used hardly ever in wintertime because there were no heaters. In her view there had been times when the area was quieter, and it had not been used for ten years. Her oral evidence was that she was aware of the use because of sight and sound and there were different sources of noise including deliveries. She accepted that it was seldom used in winter but was used in summer. She did not know if the area was used by smokers but commented that smokers did go out to the front areas of the public house. At Christmas, when the public house was busy inside, her evidence was that everyone stands at the front of the public house, and she could not remember if people were at the rear of the public house outside.
34. It is clear from the evidence that the areas set aside as a bin store have been in existence for well over ten years including the relevant period post 2003, and more likely than not to have been used as such since the licenced premises use began.
35. The use of the appeal area by employees for cigarette and meal breaks (as a breakout area) was not challenged. I am satisfied that the area of the appeal was used in this way and more likely than not it was a daily occurrence for well over ten years post 2003. The issue in dispute therefore is the use by

- customers, whether there was a closure of the area at 10pm, and whether or not that use is immune from enforcement action.
36. The appellant accepted that despite Mrs Jacobs referring to a closing time of the area at 10.30pm it was likely, given other evidence by witnesses, that the time was 10pm. I accept that the evidence at the Inquiry was more likely than not that the area was closed to patrons at 10pm by the use of the blackboard signage. The management of patrons to the area hatched red clearly sought to avoid its use beyond 10pm at night for much of the time including when Mrs Jacobs was manager from 2010. I am satisfied on the balance of probabilities that the use of the seating area by patrons was only up until 10pm for the periods covered by the evidence.
37. There was debate between the parties about what continuous use meant in the context of an ancillary space to a licensed premises. The appellant referred to an office use which would not be required to persist for 365 days a year. It would be anticipated and commensurate with that use that the office would be empty during weekends and during holidays. Such breaks in the pattern of use would not suggest it was not continuous or interrupted. Moreover, the local planning authority would have been able to take enforcement action against the use at any time.
38. I was referred to the case *Westminster City Council v SSCLG* [2013] where a similar issue had arisen. This case related to the siting of pavement furniture outside of a restaurant. It is clear that in determining continuous use in any case the normal and accepted part of the provision of the ancillary use should be considered.
39. I therefore have to determine what is a normal and accepted part of the provision of an outside seating area ancillary to a licensed premises. Many such establishments, public houses, restaurants, and other licensed premises, often have outside seating for customers. While they may be laid out all year round with seats and tables, some would have those elements stored during inclement weather or the colder winter months. What is clear is that the pattern of use of outside space at a licensed premises is more frequent in good warmer weather and less so in periods of inclement or cold weather. That does not mean the use is not continuous, it just means that an external space to a licensed premises is used in a certain way.
40. In my view, the evidence demonstrates that it is more likely than not that the area hatched red on drwg no MC718-201 has been laid out as a seating area from at least 2002 and probably from 1999. The use of that area has been established from the oral and written evidence from around the same time. The majority of the oral and written evidence is for latter years but Ms Katsiani and Nikki Finch address periods before 2000. The aerial photographs and the personal accounts demonstrate, on the balance of probabilities, that the area was laid out as a seating area and had been used as such. The latter evidence demonstrates it was regularly used by witnesses to the Inquiry from 2007 by others.
41. The neighbours evidence demonstrates that it was also in use from the time the neighbours moved into the area. Mr Ayers in 2002 and Mrs Beaumont in 1991. These periods are prior to the grant of planning permission HGY/2003/1677.

42. There is no evidence which demonstrates that the layout of the area ever changed from an area with tables and chairs. On the contrary the aerial photographs demonstrate that the layout was, on the balance of probabilities, as described in the oral and written evidence by the appellant's witnesses. However, the oral and written evidence does indicate it was not always used on a daily basis by customers. In the light of the Westminster case, and my understanding of ancillary outside areas for restaurants and public houses, I consider that this pattern of use is normal for an outside garden area at a licensed premises and that it would have been open to the Council to take enforcement action at any time during the periods from 2003 when planning permission HGY/2003/1677 was granted to the present day. In fact, the Council accepted it was being used as an ancillary external space for customers in the Officers report in 2006.
43. I also have to determine whether the closure of the area for refurbishment in 2019 and when the local planning authority enforcement officers visited in 2019 and the use ceased for a 'few days' are relevant. In a period of ten years, or 520 weeks, these periods are in my view so minimal as to not result in a break in continuous use.

Conclusions

Appeal A

44. For the reasons given above I conclude on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land identified with red hatching on drwg no MC718-201, for refuse/bin storage, staff breakout area and as a customer garden/terrace, ancillary to the lawful use as a licensed premises contrary to condition 5 of permission HGY/2003/1677 (incorporated from planning permission HGY/32637) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B

45. In relation to Appeal B the BCN identifies the original planning permission and not the subsequent permission granted under reference HGY/2003/1677. The BCN was issued on 6 October 2020 and the application in Appeal B was dated 12 November 2020. I am satisfied that the licensed premises are operating pursuant to planning permission HGY/2003/1677 and, as such, I do not accept that section 191(3)(b) is engaged in relation to Appeal B.
46. For the reasons given above I conclude on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land identified with red hatching on drwg no MC718-201, for refuse/bin storage, staff breakout area and as a customer garden/terrace, ancillary to the lawful use as a licensed premises contrary to condition 5 of permission HGY/2003/1677 (incorporated from planning permission HGY/32637) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Killian Garvey	Of Counsel instructed by Mr D Williams of Eversheds
He called	
Mr Denis Turner	For the appellant
Mr James Mulvey	For the appellant
Ms J M Harmond	For the appellant
Williams BA PGCA MIPD	
Mrs Jelena Voroncova	
Mrs Terry Jacobs	For the appellant
Ms Soulla Katsiani	For the appellant
Mr Nick Davey BSc	Partner, JTS Partnership, for the appellant
MRICS	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Beglan	Of Counsel instructed by Mr J Farley, Senior Lawyer, of the Council of the London Borough of Haringey
He called	
Mr L Ackrill BA (Hons)	Senior Planning Officers, Council of the London Borough of Haringey

INTERESTED PERSONS:

Mr M Ayers	Local resident
Mrs Beaumont	Local resident

DOCUMENTS SUBMITTED TO THE INQUIRY

- 1 Decision Notice HGY-2020-2906 dated 11 December 2020 submitted by the Council (submitted on 3 August 2021)
- 2 Consultation responses on Appeal B application submitted by the Council (submitted on 4 August 2021)
- 3 Appendix 2 and 5 agreed plans submitted by appellant (submitted on 12 August 2021)

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 5 December 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in red on the plan (dwg no MC718-201) attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence has demonstrated, on the balance of probabilities, that the use of the land identified with red hatching on dwg no MC718-201 has been in use for refuse/bin storage, staff breakout area and as a customer garden/terrace up to 10pm, ancillary to the lawful use as a licensed premises contrary to condition 5 of permission HGY/2003/1677 (incorporated from planning permission HGY/32637), for a continuous period of at least ten years before 5 December 2019 (the date of the application) and that the use is lawful.

Signed

Hilda Higenbottam

Inspector

Date: 17 February 2022

Reference: APP/Y5420/X/21/3266719

First Schedule

The use of the land identified with red hatching on dwg no MC718-201 (Plan B attached to this decision) for refuse/bin storage, staff breakout area and as a customer garden/terrace up to 10pm, ancillary to the lawful use as a licensed premises contrary to condition 5 of permission HGY/2003/1677 (incorporated from planning permission HGY/32637).

Second Schedule

Land at Maid of Muswell, 121 Alexandra Park Road, London N10 2DP (the whole site as identified on Plan A and the specific area as identified on Plan B attached to this decision).

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan A

This is the plan referred to in the Lawful Development Certificate dated: 17 February 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

Land at: Maid of Muswell, 121 Alexandra Park Road, London N10 2DP

Reference: APP/Y5420/X/21/3266719

Scale: nts



Plan B

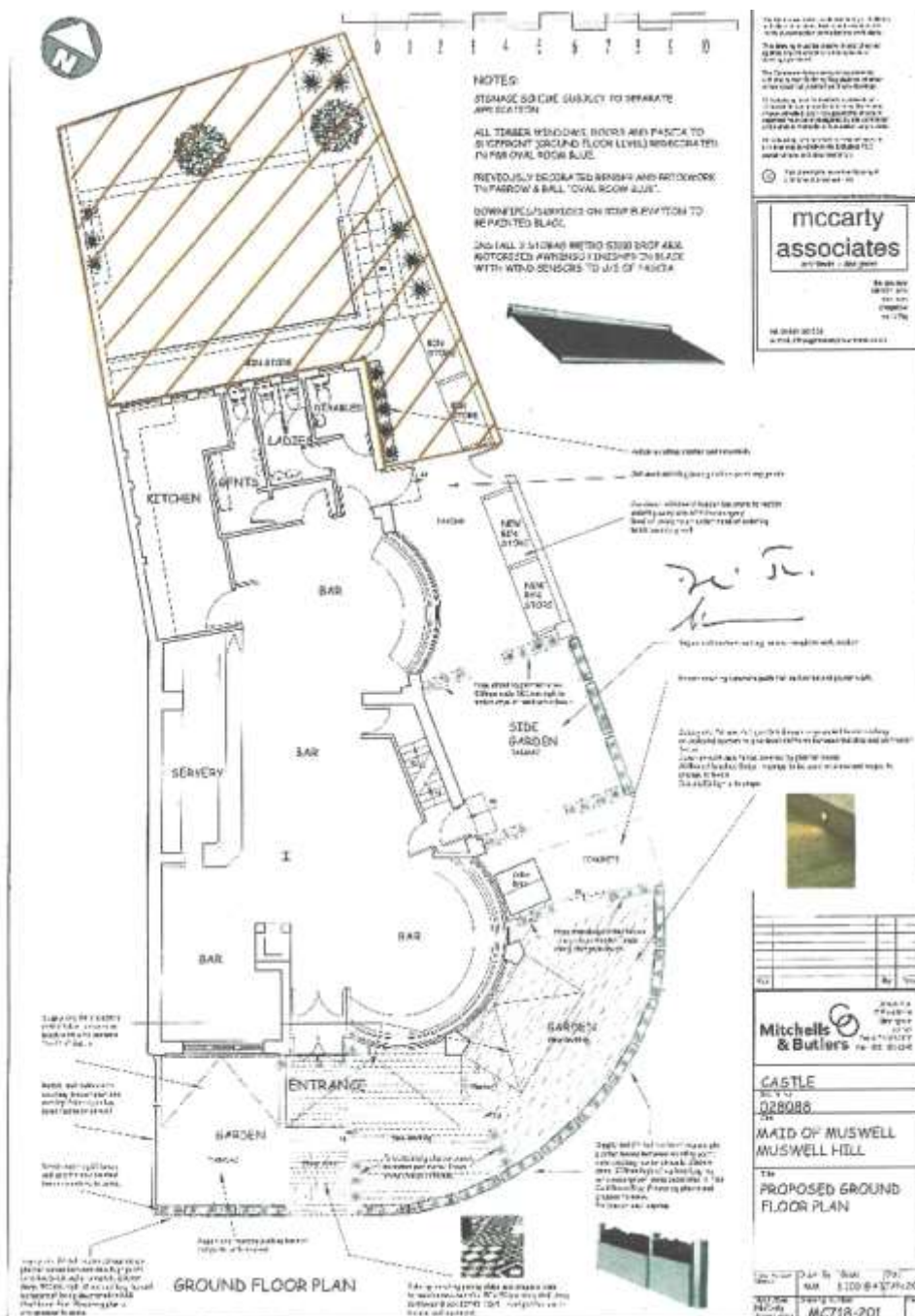
This is the plan referred to in the Lawful Development Certificate dated: 17 February 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

Land at: Maid of Muswell, 121 Alexandra Park Road, London N10 2DP

Reference: APP/Y5420/X/21/3266719

Scale:nts





Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 November 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in red on the plan (dwg no MC718-201) attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence has demonstrated that, on the balance of probabilities, the use of the land identified with red hatching on dwg no MC718-201 has been in use for refuse/bin storage, staff breakout area and as a customer garden/terrace up to 10pm, ancillary to the lawful use as a licensed premises contrary to condition 5 of permission HGY/2003/1677 (incorporated from planning permission HGY/32637), for a continuous period of at least ten years before 12 November 2020 (the date of the application) and that the use is lawful.

Signed

Hilda Higenbottam

Inspector

Date: 17 February 2022

Reference: APP/Y5420/X/21/3266720

First Schedule

The use of the land identified with red hatching on dwg no MC718-201 (Plan B attached to this decision) for refuse/bin storage, staff breakout area and as a customer garden/terrace up to 10pm, ancillary to the lawful use as a licensed premises contrary to condition 5 of permission HGY/2003/1677 (incorporated from planning permission HGY/32637).

Second Schedule

Land at Maid of Muswell, 121 Alexandra Park Road, London N10 2DP (the whole site as identified on Plan A and the specific area as identified on Plan B attached to this decision).

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan A

This is the plan referred to in the Lawful Development Certificate dated: 17 February 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

Land at: Maid of Muswell, 121 Alexandra Park Road, London N10 2DP

Reference: APP/Y5420/X/21/3266720

Scale: nts





Plan B

This is the plan referred to in the Lawful Development Certificate dated: 17 February 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

Land at: Maid of Muswell, 121 Alexandra Park Road, London N10 2DP

Reference: APP/Y5420/X/21/3266720

Scale: nts

