



Appeal Decision

Site visit made on 23 April 2025

by **A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 30th April 2025

Appeal Ref: APP/T5150/X/23/3322615

Blue Ginger Bar & Restaurant, 383 Kenton Road HA3 0XS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Sunny Popat against the decision of the Council of the London Borough of Brent
 - The application Ref 22/3604, dated 24 October 2022, was refused by notice dated 25 January 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
 - The use for which a certificate of lawful use or development is sought is described as follows: "A restaurant (Use Class E) located at the ground floor and ancillary uses on the first floor, including a manager's flat and 9 staff bedrooms".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The details for the banner header above are taken from the correct application form and not the proposed use or development form submitted on 18 October 2022. I have taken the description from the appellant's statements.
3. The appeal turns on the facts of the case and relevant planning law and whether the specific matter is lawful as defined by the 1990 Act. Planning merits are not relevant at any stage in this process. While the appeal could have been determined on the evidence before me without a site visit, I decided to make an unaccompanied site visit in the late evening purely for observational purposes.

Inspector's reasons

4. In this appeal, the onus of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability.
5. Essentially, the appellant seeks a LDC on the basis that the existing use of the application site is lawful due to the passage of time, because a restaurant located at the ground floor and ancillary uses on the first floor including a manager's flat and nine staff bedrooms began on or before the relevant date, which is 24 October 2012. The claim is

that use has continued thereafter for a period of 10 years without significant interruption. The information submitted with the LDC application, including various reports and financial data, is also relied on by the appellant. Among other things, the details include floor plans, photographs, the area usage breakdown and booking information and supporting documentary information.

6. The nub of the appellant's case is that the existing use falls within a use classified as Class E to the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) ("the UCO"), which came into force on 1 September 2020. Class E covers use characterised as commercial, business and service. A restaurant would be considered as a use 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. In contrast, use as a public house (PH), wine bar, or drinking establishment with or without expanded food provision do not fall into any classification. The Council considers the application fails to demonstrate that the existing use falls within Class E, because it is in a sui generis mixed use comprising restaurant and drinking establishment.
7. In this case, both appeal parties heavily focus on establishing, or disproving, an ancillary link between the restaurant and bar use. For example, the Council's reasoning suggests that the latter is not ancillary to the former and so the ground floor is in a mixed use. The appellant strongly disagrees. They provide evidence of usage and claim that the total area of the premises that can be classified as a bar area is 83 sqm and the restaurant area equates to 235 sqm – this equates to approximately 26% of the total building area as bar areas. Patrons can order food and dine in a casual setting than the formal dining rooms. In addition to this, the restaurant sales and company accounts show that 70% of revenue from the restaurant is from food and the remaining 30% is from drink. I have reviewed all the evidence presented and, for the following reasons, I consider that the approach adopted by both appeal parties is flawed.
8. No. 383 is a two-storey detached building with on-site parking, and it has loading and unloading areas for servicing. The building was primarily used as a PH. The available information indicates to me that the PH formed a single unit of occupation. It is not uncommon for such drinking establishments having incidental uses, but each case needs to be considered on its individual merits. The description of the existing use for which immunity is claimed relates to the use as a restaurant located at the ground floor and ancillary uses on the first floor, including a manager's flat and nine staff bedrooms at first floor level. However, a residential use is normally a primary use, and it is rare for such uses to be regarded as incidental or ancillary to some other primary use.
9. The submitted plans are inconsistent with the description of the development. For example, the ground floor plan shows dining rooms, kitchen and toilet facilities. Combined with the documentary evidence, the layout resembles a restaurant with designated areas for consuming beverages. It is unclear how these spaces function with the restaurant. Nonetheless, the first-floor plan is confusing because it shows two office spaces and several bedrooms. There is a self-contained ensuite bedroom. There are some kitchens and bathrooms, and a locker room although it is unclear how these spaces are used or shared. Nevertheless, the layout does not reflect the description of the existing use because it is unclear where the manager's flat is located and there more than nine bedrooms. This creates significant confusion in my mind over the accuracy of the evidence presented. In any event, the submitted evidence does not clearly show how the residential use of this type and scale is ancillary to the restaurant use. There are no

specific details of how the residential use functions in connection with the primary restaurant activity. For example, who occupies the bedrooms.

10. The sworn testimony is too vague because the witnesses simply say that the prime focus of the premises is to serve food, and this has not changed since the restaurant opened in January 2004. That claim is supported by financial information all of which I have considered. However, the quantum of evidence presented does not sufficiently show how the planning unit, or property, functioned and how it had been occupied on or before the relevant date and the nature and type of use for a period of 10-years without significant interruption. The statements do not tell me the kind of occupation of the ground and first floor.
11. Even if the Council is incorrect and the drinking establishment use is ancillary to the restaurant, I cannot grant an LDC. There is an absence of detailed evidence showing the scale of the residential use. I consider the use of the property can be characterised as a mixed restaurant and residential. Each activity having its own incidental uses. That being so, the existing use of no. 383 cannot fall within Class E to the UCO because a mixed use of this kind does not fall in any use class and is described as a sui generis use.
12. For the following reasons, I cannot grant an LDC for a modified description for the restaurant use located at the ground floor. Class E to the UCO includes part use and a building includes part of a building. The problem is the way in which the existing use has been described as well as the uncertainty surrounding the evidence presented. The quantum of submitted evidence is inconsistent, unclear and incomplete to sufficiently show part restaurant use of the ground floor. I cannot be sure the claimed restaurant use began on or before the relevant date and continued for a period of 10 years without significant interruption.
13. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and evidence before me. There is insufficient evidence to substantiate the appellant's claims upon whom the onus falls. As the Planning Practice Guidance says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Conclusion

14. I do not consider the reasons given by the Council justifying the refusal of the LDC application to be well-founded.
15. For the reasons given above, I conclude that the existing use described in the LDC application cannot be certified as lawful falling within the meaning of s191(2) of the 1990 Act. My reasons given above are well-founded and the appeal should fail.
16. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

A U Ghafoor
INSPECTOR