



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2026

Appeal Ref: APP/M4320/X/24/3358042

175 Liverpool Road, Birkdale, Southport, Merseyside PR8 4NX

- 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 OMG against the decision of Sefton Metropolitan Borough Council.
 - The application ref DC/2024/01830, dated 3 October 2024, was refused by notice dated 9 December 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which an LDC is sought is hot food takeaway.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.

Reasons

3. 175 Liverpool Road is a two-storey building with a west frontage to the road; in the middle of the frontage is a front door. The front door leads to part of the ground floor and via a staircase to the whole of the first floor; this part of the building has been in a mixed residential/office use. The remainder of the ground floor of the two-storey building is the premises that are the subject of the appeal. The premises has a shopfront and has no access to the other part of the ground floor of the building. Attached to the south elevation of the two-storey building is a single storey flat roofed building that has a garage door in its west frontage. To the rear of the two-storey building is a range of buildings that have been in use for commercial purposes.
4. In early 2024 an application for an LDC (Ref. 2024/00021) was submitted for the proposed use of buildings for Class E purposes. The location plan submitted with the application identified the buildings to be those to the rear of the two-storey building and the attached single storey building; the plan excluded the two-storey building. The application was approved and an LDC was granted on 5 March 2024 for 'proposed use as Class E'. Later in 2024 the appeal application was submitted and sought to establish the lawfulness of the use of the appeal premises as a hot food takeaway. The LDC that has been granted has no bearing on this appeal because the appeal premises are separate from the buildings for which the LDC was granted.
5. For an LDC to be granted for the use of the premises as a hot food takeaway, the use must be immune from enforcement action. To be immune from enforcement action

the use must have subsisted for a period of ten years. If the ten year period was in the past then the established lawful use must then have continued uninterrupted up to the date of the application. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the use of the premises as a hot food takeaway subsisted continuously for a ten year period and that the use has continued up to the date of the application.

6. On the application form the Agent indicated that a hot food takeaway is a Class E use. He subsequently accepted that this was an error; a hot food takeaway is a *sui generis* use. The buildings at the rear were in use as a bakery producing food for sale to hotels and other outlets. It was that previous bakery use that led to the Council granting the LDC for their Class E use. Though the appeal premises were linked to the buildings at the rear through ownership and name, and some baked products may have been sold through the appeal premises, they have been and are a separate entity that has its own history of use. The Appellant has submitted three Statutory Declarations in support of his claim that the premises have been in use as a hot food takeaway.

7. In her Statutory Declaration Ms C Barr, a local resident since 1984, declares that she is "...familiar with the area and in particular the shop called The Dutch Bakery at 175 Liverpool Road, Southport...", that "Since living at my home I confirm that (the)...shop has prepared and sold a range of hot food takeaways which includes such items as sausage rolls, pies, breakfast dishes and a range of confectionary", and that "The business known as The Dutch Bakery ceased trading in 2023 and I am informed is being refurbished as a hot food takeaway with another business owner". In his Statutory Declaration Mr K Bacon, a previous owner of the appeal premises, corroborates the declaration of Ms Barr and also declares that "The shop was used as a hot food takeaway from 1971..." and had "...no seating for patrons".

8. The current owner of the appeal premises, Mr R Pittaras, has made a Statutory Declaration in which he corroborates the evidence of Ms Barr and Mr Bacon and also declares that "It has been used as a hot food takeaway continuously from 1971 when the shop temporarily became vacant in September 2023 after which it is being fully refurbished starting July 2024 as a hot food takeaway". The vacancy of the premises coincided with the cessation of the bakery use at the rear. It is not known when Mr Pittaras purchased the appeal premises but it is likely he did so knowing of its previous use. That use ceased temporarily whilst Mr Pittaras embarked upon refurbishment of the premises before recommencing its established use.

9. The period of non-use was temporary pending recommencement of the use and does constitute a lack of continuity of the use. The Appellant has provided sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the use of the premises as a hot food takeaway subsisted continuously for a ten year period and that the use has continued up to the date of the application.

10. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for a hot food takeaway at 175 Liverpool Road, Birkdale, Southport, Merseyside was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector



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 3 October 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan 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 use subsisted continuously for the ten year period prior to the date of the application and is immune from enforcement action.

Signed

John Braithwaite

Inspector

Date: 13 February 2026

Reference: APP/M4320/X/24/3358042

First Schedule

Hot food takeaway

Second Schedule

Land at 175 Liverpool Road, Southport PR8 4NX

IMPORTANT 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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

Scale: Not to Scale

