



Appeal Decision

Site visit made on 22 December 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 March 2026

Appeal Ref: APP/A1530/X/25/3362480

East Gate Inn, 6 Harwich Road, Colchester, Essex CO4 3BN

- 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 James Moreno of Eastgate Inn against the decision of Colchester City Council.
- The application ref 240740, dated 4 April 2024, was refused by notice dated 17 September 2024.
- The application was made under section 191(1)(a) 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 existing use is as a guesthouse and Use Class C1 on the upper floor, The ground floor pub has been non-operational for six years, but serves as an entrance/lobby area for the guesthouse clients.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The applicant ticked '*the use began more than 10 years before the date of this application*' on their application form, identifies the use as 'C1 – Hotels' and describes the use as '*a guesthouse and Use Class C1 on the upper floor, The ground floor pub has been non-operational for six years, but serves as an entrance/lobby area for the guesthouse clients.*'
3. Within their grounds for application, the appellant states that '*the guesthouse operation has taken place for 10 years. The applicant wishes to regularise the use in any case, but in anticipation of upgraded the guesthouse to meet modern requirements (the last alterations were undertaken in 2015); this includes incorporating the redundant pub, for which there is a current planning application with the Council.*' The appellant states that the activity begun on 21 January 2014.
4. The Council refused the application on the basis that the application does not show that a material change of use has occurred for the required 10-year period to be immune from enforcement action. The Council referred to the use as '*use of the first floor of the building known as the East Gate Inn as a Guest House (C1 Use Class).*' The appellant raises concern with the Council's description because, it is suggested, it appears to result in the ground floor guesthouse bedroom not being the subject of the application. On their appeal form, the appellant states '*A certificate of existing lawful use (CLEUD) is being sought. The existing use is considered Sui Generis (public house) and C1 (guest house).*'
5. The Planning Practice Guidance makes it clear that an application needs to describe precisely what is being applied for and the land to which the application relates. Section 191(4) of the Act allows a local planning authority to modify the

description of the existing use, operation or other matter and I may exercise this power on appeal.

6. I raised with the appellant exactly what it is they wish me to certify is lawful. In response to my query, the appellant states that there is no potential or intended future use of the ground floor of the building as a public house (that has now been closed for 7.5 years). Since the closure, the ground floor has been used as the reception area serving the guesthouse visitors as well as providing one guest bedroom – and this is sought to continue from hereon. In this regard, it is suggested that the description *'the continuing use of the building as a guesthouse'* best fits.
7. Following a further query, the appellant advised that *'the appeal relates to the upper floor, and not the ground floor use(s) which have not been a matter of planning consideration/decision.'* The appellant suggests accepting the *'mixed used [sic] of the building as guesthouse (C1) and public house (Sui Generis), rather than our earlier preference of only guesthouse use.'*
8. I am obliged to issue an LDC for any use or development that is shown to be lawful on the facts and evidence, rather than refuse a certificate on the basis of some error or misunderstanding in the application form. It is clear that the appellant is seeking an LDC for the guesthouse use, whether as a single primary use (for the whole or part of the land) or as part of a mixed use. I shall therefore consider the appeal on this basis.

Main Issue

9. The main issue is whether the Council's refusal to grant a lawful development certificate (LDC) is well-founded.

Reasons

10. An application under section 191(1)(a) of the Act¹ seeks to establish whether (a) any existing use of buildings or other land is lawful. Section 191(2) sets out that 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.
11. Section 171B of the Act sets out time limits for taking enforcement action. Section 171B(3) of the Act provides that, in the case of any other breach of planning control no enforcement action may be taken after the period of ten years beginning with the date of the breach. The main thrust of the appellant's case is that East Gate Inn has continuously operated as a guest house since 2014 (and before) to the present, other than enforced closures due to Covid and so the use is now lawful.
12. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development is lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict

¹ Town and Country Planning Act 1990 (as amended)

their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

13. The appellant made the application on 4 April 2024, so the appellant will need to show, on the balance of probabilities, that the material change of use occurred on or before 4 April 2014 and continued for a period of at least 10 years without significant interruption. The Council refused the application because it found that the application does not show that a material change of use has occurred for at least 10 years and is therefore not immune from enforcement action.
14. The appeal site comprises a substantial building which is laid out with a bar area, ensuite bedroom, male and female toilets and kitchen on the ground floor and ensuite bedrooms on the first floor. There is a basement, which is accessed from the ground floor, and a yard to the side of the premises, which is accessed via the kitchen. To the front of the building is a fascia sign, which says, '*Public House est 1733 East Gate Inn Guest House* (followed by a telephone number)' and a hanging bracket sign which says, '*East Gate Inn B&B* (followed by a telephone number)'. Two doors to the front of the building provide access to the bar area, while a wooden gate provides access to the yard at the side.
15. The Council states that the appeal site has historically been operated as a wet led public house and, from the evidence, it seems the premises was previously named 'The Clarendon'. While the appellant has provided limited evidence regarding the use of the site prior to 2012, it is the appellant's case that a change from the previous public house function to guest house (with bar) took place in 2012, revamped when the purchasers bought the previous failed pub operation. It is suggested that the emphasis of the establishment shifted from public house to the guest house function, to include a bar, though also open to the public.
16. The basic approach in determining whether a material change of use has occurred, is that there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. The general rule is that the materiality of change should be assessed in terms of the whole site concerned. Consideration must be given to the relevant planning unit and its primary use over the relevant period.
17. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. The concept of physical and functional separation is key. It is generally held that there are three broad categories of distinction:
 - i) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - ii) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - iii) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.

18. In this case, the unit of occupation is the whole site. It is owned by the appellant, and, while different individuals occupy different parts of the building, the appellant retains overall control. During my visit, I saw that armchairs and a sofa, tables and benches and a television are provided in the former bar area. Although a bar has been retained on the ground floor, pumps and optics, which are likely to have been used as part of a public house (or bar) use, are no longer present (though I saw that connections for pumps and a number of barrels are still present in the basement of the premises). Toilet facilities are present, as well as a kitchen to the rear.
19. Bedrooms within the premises are modest in size, with en-suite facilities. Given the layout of the property, I consider occupants of the bedroom are likely to use the former bar area for rest and relaxation away from their rooms. The basement appears used for storage, with what appeared to be domestic paraphernalia. To the side of the premises was a yard area, with a portakabin (which I was unable to access), a number of bicycles and washing drying on a washing line. From the evidence before me and from my inspection of the site, in my judgement, at the date of the LDC application, it is likely that the appeal site comprised a single planning unit which has one primary use.
20. In support of the appellant's case, I have been provided with a news article dated 7 November 2012 'Pair relaunch Clarendon and new guest-house'. A second news article, dated 30 December 2012, states '*A bar and guesthouse has opened at the former Clarendon pub in Harwich Road, Colchester.*' The appellant has also provided me with a statutory declaration stating that the East Gate Inn has been used as a guesthouse since 21 January 2014. However, it is not clear what the appellant means by the term 'guesthouse', nor is there any detail in the statutory declaration as to exactly how the premises has been used over time.
21. There is inconsistency in the way the uses are referred to by the appellant. In their supporting notes, for example, the appellant states 'the ground floor ceased operation as a **pub** some six years ago, and is currently used as a reception area/kitchen servicing the guesthouse.' In their Statement of Case, the appellant states 'The appellant operates the guest house, and also the **pub** until its closure', 'The **pub** operation closed in 2018 because it was not viable', 'The compatible (now closed) **pub** and guesthouse operations have traded under the name 'East Gate Inn' since before 2014'. In their final comments the appellant states that the 'area was a 'bar' and not a 'public house' after the new ownership repurposed the facility as a guesthouse from before 2014.
22. The appellant suggests that the term 'Inn' would be more appropriate, in preference to 'public house', pointing to the name of the premises, which is East Gate Inn. The appellant has drawn my attention to the dictionary definition of 'inn', including 'an establishment for the lodging and entertainment of travellers', 'generally establishments or buildings where travellers can seek lodging, and usually food and drink', 'a house providing accommodation, food and drink, especially for travellers'. While the name of the property gives an indication of the owners' intentions for the site, what is of most importance in this case is how the premises has been used.
23. However it is referred to, it is clear from the evidence of both the Council and the appellant that food and drink was still sold from the premises after 2014. This part of the business closed in 2018 because (the appellant states) it was not viable.

From the evidence provided, including booking records and advertising, it seems that the guesthouse element of the use has continued to operate throughout this period and beyond.

24. The Council has provided me with a number of photographs, which show the front of the premises between 2014 and 2019. Although accommodation is advertised, signage also advertises homemade food and Sunday Roast open to the public, as well as BT Sport, private hire and karaoke. The signage used includes chalk boards, which would enable the operators of the premises to change its wording with some regularity, to reflect offerings at a particular point in time. In the photograph dated 2014, for example, one of the chalk boards advertises karaoke 'every Friday 7.30pm'. This points towards the premises being used (at that time) as a drinking establishment with food provision, as well as a guest house (whether incidental or not).
25. Although there may be practical reasons as to why individuals using the accommodation element of the premises shared the same access as those visiting the premises to eat, drink, watch sports or participate in karaoke, the layout of the premises and its ownership and control lead me to believe that the premises was, at that time, a single planning unit. While the way in which the bar is used has likely changed, there is no evidence to show that the layout of the premises has changed since 2018. Individuals accessing the bedrooms are likely to go through the bar to access their rooms. Indeed, I saw signage on the bar which appears intended for occupants of the bedrooms, including information regarding checkout and emergency number and a key drop, which is characteristic of a hotel/guesthouse.
26. The appellant refers to a '*change from the previous public house function*', '*from public house to the guest house function*'. Reference is also made to the property being revamped when the purchasers bought it, '*shifting the emphasis of the establishment from public house to guest house, to include a bar, though also open to the public*'. However, there is limited evidence as to how the appeal site operated prior to appellant's purchase of it in 2012, to enable me to determine whether the change to the character of the use at that time was material.
27. It is not clear, for example, how the first floor of the premises was used. As the Council points out, it is not unusual to find the provision of guest accommodation alongside a public house use. Such uses may be compatible, but that does not necessarily mean that they are incidental (or ancillary). Whether a use should be regarded as incidental will be a matter of fact and degree. A non-residents bar, for example, can be incidental to a guest house use, so long as the character of the use of the planning unit overall remains that of a guest house.
28. There is very little evidence to show that the use of the bar by non-residents was incidental to the guest house use. The advertising evident in the photographs provided by the Council suggests that, prior to its closure, the bar was frequently used by non-residents for activities such as karaoke. I note that the 'drinks/food use' was closed in 2018 because (the appellant suggests) it was 'loss making', however, whether a use is profitable or not is not determinative as to whether it is a primary use. Nor is it an indication that other activities are themselves a primary use. Similarly, while size may be a relevant factor, it is not, determinative.

29. While the bar use may have occupied a smaller floor space compared with the guest house use, given the advertising that was carried out, it seems to me that individuals using the bar were more likely to be non-resident, (though I acknowledge I have no substantive evidence to show who used the bar and whether they were resident or non-resident), resulting in comings and goings which are not typical of a guest house use. Events, such as karaoke and office parties, are (in my experience) not typical of a guest house use and are likely to generate noise and disturbance which is not characteristic of a guest house use. In my judgement, it is unlikely that the use of the bar was incidental to the guest house use, rather it is more likely that it was a primary use of the site.
30. I note the Council's position is that the lawful use is a *sui generis* public house use with any accommodation provided ancillary to that use. In support of its case, the Council refers to appeal decision APP/N4720/X/13/2211084, which concerned The Crown Hotel in Wetherby. However, I have not been provided with full details of that case. While the Inspector in that case may have had sufficient evidence to conclude that the accommodation was incidental (or ancillary) to the public house use (or part and parcel of it, such that there was a single primary *sui generis* use comprised of disparate but related activities), without further information regarding the way in which the East Gate Inn has been used, either prior to 2012 or since, I am unable to draw such a conclusion in this case.
31. Moreover, as both parties accept, in 2018 the use of the bar ceased. Incidental use rights do not continue after the cessation of the primary use. If the public house (or bar) use ceased in 2018, even if the guest house element of the use continued, it is likely that the character of the use changed as a consequence of that cessation. Comings and goings to the premises, for example, as well as noise and disturbance, particularly in the evening, are likely to be materially different between a guest house use and a *sui generis* public house use (or mixed use of public house and guest house).
32. During my visit, I saw that a number of the advertising boards which are evident in the photographs provided by the Council, are no longer present and advertising is limited to the fascia board above the doors and the hanging bracket sign (a single board was present on the gates to the side of the building at the time of my visit, but had no writing on it). The external appearance of the building has, in my view, materially changed.
33. As set out above, the appellant suggests 'accepting' the mixed use of the building as guesthouse and public house. However, by the appellant's own admission, the public house use of the premises ceased in 2018, which is a significant period of time. There is no suggestion that the appellant intends (or has sought) to resume that use (notwithstanding they are prepared to 'accept' the mixed use). Even if the material change of use of the premises to a mixed use of the building as a guesthouse and public house occurred on 21 January 2014, cessation of the use of the bar in 2018 is likely to have resulted in a material change of use **to** a guest house use (my emphasis) and, as that use has not been continuing for a period of 10 years, it was not immune from enforcement action at the date of the LDC application.
34. I note that the appellant has sought to respond to the Council's requests for information, where they considered it relevant. However, this does not mean that a local planning authority is obliged to issue a certificate, if the evidence does not

show that the matter applied for was not lawful at the date of the application. While there may not have been any evidence from third parties regarding the use, as set out above, the burden is firmly on the appellant to show, on the balance of probabilities, that the use was lawful at the date of the application. The appellant's evidence in this regard is not sufficiently precise and unambiguous. Furthermore, the Council has provided evidence in the form of photographs, which, for the reasons set out above, makes the appellant's claim less than probable. The appellant has not discharged the burden upon them, for the reasons set out above and so the appeal must fail.

Conclusion

35. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use as a guesthouse is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M Savage

INSPECTOR