



Appeal Decision

Site visit made on 28 April 2026

by **Peter Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 May 2026

Appeal Ref: APP/W2465/X/25/3361800

33 Parker Drive, Leicester LE4 0JP

- 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 J Kurzawski against the decision of Leicester City Council.
 - The application ref 20241215, dated 5 July 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 a hot food takeaway.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded. This turns on whether, on the balance of probability, the hot food takeaway use had taken place for a sufficient continuous period such that it was lawful on the day the application was made.

Reasons

General approach to LDCs

3. Advice relating to LDCs is provided by the Government's Planning Practice Guidance (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. 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. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant.

The requirements to establish lawfulness in this case

4. Section 191(2) of the Act states that:

For the purposes of this Act 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.

5. There is no evidence of any enforcement notice in force when the LDC application was made, so my decision hinges solely on s191(2)(a). The appellant's claim is that the time for enforcement action had expired when the LDC application was made.
6. Section 171B of the Act sets out time limits for enforcement action. In this case, the relevant period is (and was at the time of the application) the 10 years specified in s171B(3) for 'any other breach of planning control'.
7. Thus, to acquire immunity from enforcement action and therefore lawfulness, the use would have needed to have carried on for a continuous 10-year period prior to the LDC application. Since the application was made on 5 July 2024, the use would have needed to have started not later than 5 July 2014. It is for the appellant to show this, on the balance of probability.

Assessment

8. The appellant submitted evidence to the Council in support of the application, and the Council has appended this to its appeal statement. The Council does not take issue with the claim that the use was in operation in September 2014, and the dispute focuses on the period prior to this.
9. It is clear that there have been inspections of the property by the Council's Environmental Health officers, which is indicative of a food business taking place there. The appellant states that the first recorded visit was in February 2014. However, I have not been provided with any actual record of the visit. Moreover, an email from the Council's Food Safety Team Manager appears to contradict the appellant's claim, stating that 'a food business first registered at that address as a food business establishment in September 2014 and the first food hygiene inspection was carried out on 21st January 2015'. This casts significant doubt on the claim of a visit as early as February 2014.
10. The appellant refers to a 'Just Eat' sign, which can be seen in historic Google Street View images. However, there is no claim that the sign was in place during the disputed period prior to September 2014.
11. I have been provided with leases relating to the property, but the earliest of these dates from June 2015 and says nothing about the use of the premises prior to that date.
12. I am told that the business was purchased from a previous owner, who had been running it for at least 2 years prior to the main leaseholder leasing it in March 2013. However, there is a lack of detail and documentary evidence to support the claim. Even if such a business was in operation, the information before me is vague regarding the actual period of operation and does not show whether there was continuity of use. Thus, it does not adequately fill in the gaps for the period prior to September 2014.

13. Overall, even if the use was carried out continuously after September 2014, the evidence does not show, on the balance of probability, that it was in operation for a continuous 10 year period prior to the LDC application being made. Anything less than the full 10 years is insufficient to meet the requirements of the legislation.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development 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) and dismiss the appeal.

Peter Willows

INSPECTOR