
Appeal Decision

Site visit made on 7 July 2022

by Sarah Dyer BA BTP MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 19 July 2022

Appeal Ref: APP/R5510/X/22/3290784

5 Old Dairy Lane, Ruislip, HA4 0FY

- 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 SLI UK Real Estate Fund against the decision of the Council for the London Borough of Hillingdon.
 - The application ref 72422/APP/2021/3867, dated 15 October 2021, was refused by notice dated 13 December 2021.
 - The application was made under section 192(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 to confirm Unit 5, The Old Dairy is within Use Class E, that the proposed tanning salon is within Use Class E and that the tanning salon can lawfully occupy Unit 5.
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Decision

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

Application for costs

2. An application for full costs has been made by the appellants against the Council.

Preliminary Matters

3. The appellants revised the site address in their appeal form to read 'Unit 5a Old Dairy Lane'. However, the submitted location plan (Drawing No. LP-01) identifies Unit 5 outlined in red, thus using the normal format to identify an application site. However, a lease plan which has also been submitted (Drawing No. EFE-01) shows the subdivision of Unit 5 into two units, 5A and 5B. Both plans are referred to in the Council's decision.
4. The appellants' identification of Unit 5a in their appeal form suggests that the tanning studio will occupy only this part of Unit 5. The application form as submitted refers to the site address as being 5 Old Dairy Lane, but the covering letter refers to occupation of part of the unit.
5. Drawing all of these points together, it seems to me that there is a degree of inconsistency regarding what is the appeal site. As the Council has considered the whole unit and that is what is stated to be the site address and included in the description of the proposal on the application form, I shall determine the appeal as relating to Unit 5 in its entirety as shown on Drawing No. LP-01.
6. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider, in the

context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended, which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellants and the test of evidence is made on the balance of probability.

Main Issue

7. The main issue is whether the decision by the Council to refuse to grant an LDC is well-founded.

Reasons

8. 5 Old Dairy Lane (Unit 5) is part of a large footprint building which also accommodates a supermarket (Asda) and a cinema (Cineworld). The building is within a retail park including a surface level car park off Victoria Road this part of which is characterised by residential development in the form of houses and flats and commercial uses. There is also a flatted development adjacent to the retail park.
9. Unit 5 is currently vacant and there is no dispute that the last previous use of the unit was as a restaurant. Use as a restaurant falls within Class E Commercial, Business and Service (Class E) of Schedule 2 Part A of the Town and Country Planning (Use Classes) Order 1987 (the UCO) as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.
10. Article 3(1) of the Use Classes Order establishes that the use of a building for any other purpose in the same class shall not involve development of the land. In this case the appellants consider that a tanning salon use also falls within Class E, and that consequently the use of the former restaurant unit for the tanning salon would be lawful because it would not amount to development. The Council does not consider that a tanning salon falls within Class E because such a use has been held to be a use which is sui generis.
11. Both the parties have referred to an appeal which was determined in 2021 relating to the variation of a planning permission at Ellinson Street, Jarrow which was in use, in part, as a tanning salon¹. In that case there was no dispute between the parties that the tanning salon use and the other use on the site fell within Class E. The Council says that it does not share the views of the planning authority in that case and points to the fact that the question of whether or not the tanning salon is a Class E use was not germane to the appeal decision.
12. The Council refers to another appeal decision which related to a change of use from a retail and tanning salon in Fulham Road, London². In that case the existing use was described as Class A1 and sui generis. However, the issue of whether or not a tanning salon is a Class E use was again not a matter before the Inspector in that case.

¹ Appeal Ref: APP/A4520/W/20/3263803

² Appeal Ref: APP/H5390/W/21/3274992

13. The Council refers to two further appeal decisions, at New Cross Road, London³ and High Road, Broxbourne⁴. The Council considers that these appeal decisions are relevant because in both cases a view was taken that a nail salon and beauty salon were in sui generis use notwithstanding the changes to the UCO. The appellants question the relevancy of these appeal decisions because in their view there is a difference between a nail salon/beauty salon and a tanning salon.
14. Even if I reached a different view about the similarities between these uses, in both of the appeal cases the main issue was in respect of the effect of the use on living conditions. There is no evidence before me that such effects would arise in respect of the proposed use.
15. Drawing together the points made by both parties on the appeal decisions, the decisions demonstrate that there is no definitive view that a tanning salon use falls within Class E or that it is a use which is sui generis. The UCO includes a list of uses to be regarded as sui generis, and the list does not include tanning salons. However, it is clear from the UCO that the list is not definitive and other uses may also be sui generis. Therefore, it does not exclude tanning salons from being regarded as a sui generis use.
16. The onus is on the appellants to provide evidence to demonstrate that the tanning salon use falls within Class E. The appellants say that the tanning salon will be open to visiting members of the public either on an appointment basis or walk-in trade. To that extent the proposed use falls within Class E because it provides a 'service to visiting members of the public'. Given the immediate site context, which is overtly commercial, the tanning salon also meets the description in Class E of a 'service which it is appropriate to provide in a commercial, business or service locality'.
17. In the circumstances of this particular case and acknowledging the generally more flexible approach advocated by government in respect of 'town centre uses', I find that the proposed use falls within Class E of the UCO.

Other Matters

18. The Council also considers that subdivision of Unit 5 into Units 5A and 5B as shown on the Lease Plan and the subsequent use of Unit 5A for the tanning salon would constitute development for which planning permission is required. However, the Council accepts, on the basis of guidance in the Planning Practice Guide (PPG) that planning permission may not be required to sub-divide a building where the use of any newly formed units falls within the same use class as the buildings existing primary use.
19. Although the application for the LDC did not seek to establish that the subdivision is lawful, as I have found that the tanning salon use falls within Class E and assuming that the use of Unit 5B would also fall within Class E, it is likely that a subdivision on this basis would not require planning permission. Were the subdivision to involve physical works that amount to development or the use of Unit 5B not fall within Class E, then the subdivision would not be in accordance with the PPG.

³ Appeal Ref: APP/C5690/C/21/3270217

⁴ Appeal Ref APP/W1905/W/21/3276929

20. The appellants have referred to the subdivision of Unit 5 having been the subject of a planning application (Council Ref. 73596/APP/2021/2058). However, the copy of the decision notice and officer's report provided by the appellants relate to alterations to the shopfront and the floor plans show Unit 5 as a single unit. Whilst the alterations shown on the plans would facilitate access to two separate units within Unit 5 i.e., Unit 5A and Unit 5B shown on the Lease Plan, this planning permission does not address the subdivision of Unit 5 for which planning permission may be required.
21. The Council also refer to an application for a Non-Material Amendment (Council Ref. 66819/APP/2021/1206) for the subdivision of Unit 5 to create two units and associated changes to the shopfront. However, as this application was refused it is not of direct relevance to the appeal proposal.

Conclusion

22. 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 confirmation that Unit 5, The Old Dairy is within Use Class E and that the proposed tanning salon is within Use Class E and that the tanning salon can lawfully occupy Unit 5 at 5 Old Dairy Lane, Ruislip HA4 0FY 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.

Sarah Dyer

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 15 October 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposal constitutes development within the meaning of section 55 of the Town and Country Planning Act 1990 for which planning permission is required.

Planning permission is granted by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) since the development falls within Schedule 2, Part A, Class E Commercial, Business and Service of the UCO.

Signed

Sarah Dyer

Inspector

Date: 19 July 2022

Reference: APP/R5510/X/22/3290784

First Schedule

Confirmation that Unit 5, The Old Dairy is within Use Class E, that the proposed tanning salon is within Use Class E and that the tanning salon can lawfully occupy Unit 5.

Second Schedule

5 Old Dairy Lane, Ruislip, HA4 0FY

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 19 July 2022

by Sarah Dyer

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Scale: Not to Scale



