

Supporting Statement

Use as hot food takeaway with a small seating area

21 Botwell Lane, Hayes, UB3 2AB

TABLE OF CONTENT

1.0 Introduction

2.0 Onus of proof

3.0 Conclusion

APPENDIX

A - Supporting Evidence

1.0 INTRODUCTION

- 1.1 This application is made under provisions of S.191 (1) (a) of the Town and Country Planning Act 1990 (as amended) and Article 35 of the Town and Country Planning (Development Management Procedure) (England Order 2010 (S.I. 2010/2184) (“the Order”).
- 1.2 It is also contended that the seating area is limited in scale and ancillary to the established hot food takeaway use of the premises.
- 1.3 The application is supported by:
- Completed application form
 - This statement
 - Google street view photos
 - Floor Plans
- 1.4 To avoid doubt, this application seeks formal confirmation that the use of 21 Botwell Lane, Hayes, UB3 2AB as a hot food takeaway shop with a small ancillary seating area is now established use. The use has existed continuously since July 2008.

2.0 ONUS OF PROOF

- 2.1 Paragraph 006 of the National Planning Policy Practice (NPPG) advises that: *“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”*. This burden of proof has been accepted as the starting point and overarching requirement for assembling and tendering evidence in support of this CLEUD application.

2.2 The Courts have held that the relevant evidential test to be applied by the Secretary of State on appeal – either pursuant to enforcement action or refusal of a certificate by the LPA – is “*the balance of probability*.” The applicant is not required to discharge the stricter criminal burden of proof – namely, “*beyond reasonable doubt*.” Moreover, the Courts have held that the applicant’s own evidence does not need to be corroborated by “independent” evidence in order to be accepted. The following evidence have been submitted to confirm when the use started and continuous use:

1. Google street view photos showing the seating area including the tables and chairs

2.3 See **Appendix A** for copy of the evidence submitted.

2.4 The use has existed since July 2008.

2.5 The evidence provided are sufficiently precise and unambiguous to justify the granting of certificate ‘on balance of probability. As such, if the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant’s version less than probable, there is no good reason to refuse the application.

The use does not constitute material change of use

2.6 The premises operates as a hot food takeaway, which is a sui generis use. Government guidance confirms that hot food takeaway uses were removed from the former A5 use class and are now treated as sui generis, while cafés and restaurants where food is mainly consumed on the premises fall within Class E(b).

2.7 The seating is limited in scale and is ancillary to the established takeaway use. It does not alter the primary function of the premises,

which remains the preparation and sale of hot food, mainly for consumption off the premises.

2.8 Planning permission is only required where there is “development”, which includes a material change in the use of land or buildings. The relevant planning question is therefore whether the introduction of a small seating area results in a material change in the character of the use.

2.9 In this case, the small seating area does not create a separate restaurant or café use. It remains subordinate to the main takeaway operation. The principal use is still:

- counter ordering;
- preparation and sale of hot food;
- takeaway and delivery-led trade;
- short customer dwell time;
- no table service;
- no restaurant-style operation.

2.10 The seating simply allows a limited number of customers to wait or consume food casually on the premises. That is not sufficient, by itself, to change the character of the planning unit from sui generis hot food takeaway to Class E(b) restaurant/café or to a mixed sui generis/Class E use.

Case law: primary and ancillary use

2.11 The leading principle comes from *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207, which established the approach to identifying the correct planning unit and distinguishing between a single primary use with ancillary activities and a true mixed use. The key point is that where there is one main planning purpose and other activities are incidental or ancillary to it, the whole unit can remain in a single planning use. This principle is regularly applied in planning decisions when

assessing whether a secondary activity has become a separate primary use.

2.12 On that basis, the seating area should be assessed as part of the same planning unit as the takeaway, not as a separate restaurant. It is functionally linked to the takeaway use and does not operate independently.

2.13 Further support comes from *Harrods Ltd v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 412, where the Court of Appeal considered the limits of ancillary use in a non-domestic context. The principle is that the secondary activity must be reasonably incidental to the normal use of that type of premises, not merely convenient for the particular operator. A small customer seating/waiting area is plainly a normal and reasonable feature of many hot food takeaway premises, provided it remains limited and subordinate.

2.14 The more recent *Sage v Secretary of State for Housing, Local Government and Communities* [2021] EWHC 2885 (Admin) also confirms that whether a material change of use has occurred is a matter of fact and degree, requiring assessment of whether there has been a notable change in the character of the use. The existence of a secondary activity does not automatically mean planning permission is required; the question is whether that activity changes the character of the overall use.

2.15 Consequently, the inclusion of a small seating area would not materially alter the nature of the business because:

- The takeaway use remains dominant
The majority of sales would continue to be takeaway and/or delivery. The seating would not become the main reason customers visit the premises.

- The seating area is physically limited: A small number of seats would occupy only a modest proportion of the customer area and would not displace the takeaway counter, kitchen or food preparation function.
- No restaurant-style service is proposed: There would be no waiter service, no booking system, no separate restaurant menu and no extended dining experience.
- No material amenity change: The seating would not materially increase cooking activity, extraction, odour, waste generation, noise, opening hours or customer activity beyond that normally associated with the existing takeaway use.
- No separate planning unit is created: The seating area would remain within the same premises, under the same management, and would be functionally connected to the takeaway operation.

3.0 CONCLUSION

- 3.1 The LPA is expected to produce any evidence from within its own records or obtained from other sources in order to either corroborate, or contest the submissions for this application. As observed above, in the absence of any evidence of its own, the LPA should have no good reason to refuse this application. The submitted evidence alone *is* sufficiently precise and unambiguous to justify the grant of the certificate on 'balance of probability.
- 3.2 It is also contended that the seating area is limited in scale and ancillary to the established hot food takeaway use of the premises. The primary use remains the sale of hot food for consumption off the premises. The seating does not introduce table service, a restaurant-style operation, or a separate Class E(b) use. Applying the principles in *Burdle v Secretary of State for the Environment* and subsequent case law on primary and ancillary uses, the seating is subordinate to and functionally linked with the main takeaway use. It does not result in a material change in the

Supporting Statement

character of the planning unit and therefore does not require separate planning permission.

APPENDIX



Image capture: Jul 2008 © 2026 Google



Hayes, England

 Google Street View

Jul 2008 [See latest date](#)



Image capture: Jul 2008 © 2026 Google





Image capture: Nov 2012 © 2026 Google



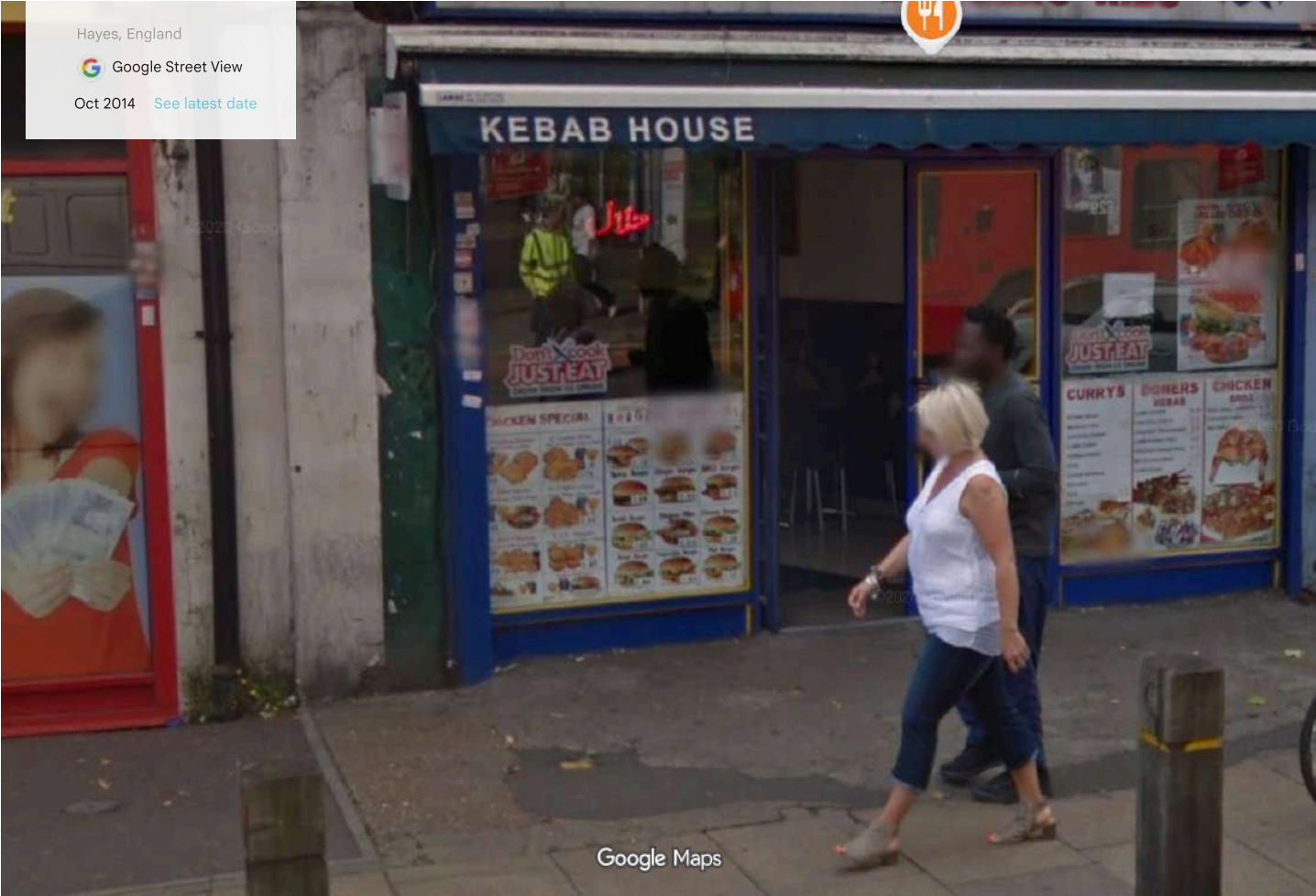


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