

Your Ref :
Our Ref : 2022-02-24 LPA
Date : 24 February 2022

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BY PLANNING PORTAL ONLY

Dear Sir/Madam

11 CHAPEL WALKS, MANCHESTER, M2 1HN.

APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR AN EXISTING LAWFUL USE

PLANNING PORTAL REFERENCE: PP-11046750

I enclose an application for a Lawful Development Certificate¹ For An Existing Lawful Use in relation to the ground floor of the above-mentioned premises.

Background

This current application is submitted to the City Council following the recent withdrawal of a previous application to change the use of the subject site; Application Reference 128802/FO/2020. Under that application, planning permission had been sought for the change of use from retail (Use Class E) to restaurant and hot food takeaway (Sui Generis Use Class) including alterations to rear elevations for fume and ventilation equipment. The Council recorded the formal withdrawal of that application on 08 February 2022.

The reasoning behind the request to withdraw the application stemmed from technical concerns the Council had in relation to the potential impact that odours from the proposed use might have on the occupants of the residential units in the upper floors of the same building. Following a number of exchanges of correspondence with the City Council – with both Planning and Environmental Health Officers – my client took the view that there was little prospect of planning permission being granted, and with regret we withdrew the planning application.

¹ Hereafter referred to as a 'LDC'

However, the subject site remains vacant, and in such a key central location in Manchester city centre, my client is keen to secure a new occupant for the unit. In order to raise the profile of the subject site, my client intends to embark on a new marketing exercise, but in order to do so, seeks to obtain the forementioned LDC in order to establish the lawful land use position. This security will prove to be essential when marketing the unit to potential new occupants who may wish to operate a new use (with no external alterations) which also falls within Use Class E.

Evidence To Support The Application

Annex 1 attached to this letter sets out the documents submitted in support of the application. This includes Evidence submitted to support the fact that, on the balance of probability, the existing Class E has been the use of the subject for at least a 10-year continuous period. The enclosed details confirm that Andrew Collinge (Holdings) Limited signed the lease for the unit on 17 March 1999 and that that lease ran until 16 March 2019. No agreement could be reached between The Landlord and Tenant for a renewal lease and we therefore understand that the Tenant vacated the property in November 2019.

The enclosed insurance policy also shows that it includes hairdressing as one of the uses of the premises at nos. 9 – 11 Chapel Walks.

The Valuations Office Agency (VOA) details confirm that the reference number for the property is 12903030 / 285 and that it is recorded as a hairdressing salon and premises, as shown below:

11, Chapel Walks, Manchester, M2 1HN

1 April 2017 - present

Your rateable value is £30,000.00



This is not the amount you will pay.

[Open all](#)

Valuation information

Description	Hairdressing salon and premises
Local authority	Manchester
Local authority reference	1904116
Base rate	£600.00
Basis of measurement	NIA
Transitional relief certificate issued	No
Valuation scheme reference	369555
Special category code	417G
Effective date	1 April 2017

Source: <https://www.tax.service.gov.uk/business-rates-find/valuations/19341809000>

Finally, as previously mentioned, Hourigan Connolly submitted a planning application for the change of use of the site – Reference 128802/FO/2020. The description of the existing use on the application forms for associated with that application was Class E (Hairdressing Salon), and this was further confirmed in the submitted Planning & Heritage Statement. Whilst the application was recently withdrawn from the Council this was on the basis that we could not find a positive resolution to the potential impact that odours from the proposed restaurant and takeaway use might have on the upper floor residential units as a result of the proposed external extraction mechanisms. At no point during the consideration of the planning application did any Officers of the Council query the existing use of the application site as it had been stated on the application forms, and we believe this strongly supports the evidence submitted with this LDC application.

Why a LDC should be granted

Having regard to the above, the LDC should be granted because the Applicant has satisfied the legal requirements. The onus of proof rests with the Applicant to satisfy the Council “on the balance of probability” that the existing use is lawful. The lawfulness of the existing use is clear from the enclosed evidence:

1. The existing use has been carried out at the site for a period of at least 23 years since the Lease of the site dated 17 March 1999 between Rockhouse Investments Limited and Andrew Collinge (Holdings) Limited.
2. The insurance policy shows that it includes hairdressing as a use within the building.
3. Valuations Office Agency (VOA) confirms that the property is recorded as a hairdressing salon and premises.
4. The Council never called into question the stated existing use on the previous (recently withdrawn) planning application.

Section 171A(1)(a) of the Town and County Planning Act 1990 (the “Act”) provides that the carrying out of development without the required planning permission constitutes a breach of planning control. In this context, “development” can comprise either a “material change of use” or the carrying out of building, engineering, mining or other operations.

There is no suggestion in this submission that a breach of planning control has occurred, but simply that the use of the site has been, for more than 10 years, a hairdressing salon in Use Class E. With this in mind, the existing Use Class E use of the site has continued for a period of at least 23 years and that this vastly exceeds the period within which enforcement action for a change of use without permission can be taken. The time for enforcement action has long expired and limb (a) of the test contained in s191(2) has therefore been satisfied.

There are no enforcement notices currently in force in relation to the existing use of the site and therefore limb (b) of s191(2) has also been satisfied.

It follows that the existing use of the site satisfies the test set out in s191(2) of the Act and is lawful; this is the test that the Council must apply when determining whether a development is lawful.

Section 191(4) of the 1990 Act sets out how an application for a LDC should be determined and states:

‘If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application’.

National Planning Practice Guidance (NPPG)

The NPPG provides government guidance on “Lawfulness and the Lawful Development Certificate”. Paragraph 019 of the NPPG states that a local planning authority needs to consider “*whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process*”.

Onus of Proof in the Application

Paragraph 006 of the NPPG states that the applicant is “*responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land*”. It states that a local planning authority is “*entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counterevidence*”.

Paragraph 006 states that “*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" (emphasis added).

The Court held in *Gabbittas v Secretary of State for the Environment* [1985] JPL 630 that an applicant's own evidence does not need to be corroborated by "independent" evidence, particularly if it is unchallenged, in order to be accepted.

In summary, the Applicant needs to provide the Council with the necessary evidence to satisfy the Council that the existing Class E use has continued at the site for the requisite period on the balance of probability. The Council must determine the Application for a LDC on its facts, looking at the evidence, and asking itself whether the Consented Development would be lawful for planning purposes on the date of submission of the LDC Application.

Planning Application Fee

The appropriate statutory planning application fee for this development is £1,386 plus the Planning Portal service charge including VAT. My client has been nominated to pay these fees to the Planning Portal.

Summary

It has been clearly demonstrated above and within the supporting documents submitted with the LDCD Application that the existing Use Class E use of the site has continued for a period of more than 10 years and therefore satisfies the test for lawfulness set out in s191(2) of the Act. It therefore follows that the Council can be satisfied that the existing use of the site is lawful and a LDC should therefore be issued pursuant to Section 191(1)(b) of the Act.

I look forward to receiving confirmation, in due course, that the application has been received from the Planning Portal, validated and that the Council will determine it post haste.

If you have any queries about the enclosed, please do not hesitate to contact me on the details above.

Yours faithfully

A handwritten signature in black ink, appearing to read 'B Moss', followed by a horizontal line.

BEVERLEY MOSS BA (Hons) MA MRTPI
Associate Director

cc: Client
M. Hourigan } by email

Encl.