

Delegated Application Report

Target Date: 09/11/21

Address: 141 Caversham Road

Application No: 211532/CLE

Proposal: Use of ground floor as restaurant (Class E)

Case Officer: Tom Hughes

Site Description

The application relates to the ground floor of 141 Caversham Road, a two storey mid-terraced building. The ground floor was part of the former Standard Tandoori restaurant at 141-145 Caversham Road. The applicant advises that the building has recently been subdivided, internally and externally, to create a separate unit at no. 141.



Description of Use or Development

A Lawful Development Certificate for an existing use is sought for the use of the ground floor of 141 Caversham Road as a restaurant. The relevant time period is ten years.

The application form incorrectly refers to the use as a restaurant falling within Use Class A3. On 21st July 2020 the Government published The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, which came into force on 1st September 2020. Amongst other changes, Part A was removed and a new Class E (Commercial, Business and Service) was introduced. Accordingly, a restaurant now falls within a Class E Use Class. The use subject of this application is considered under Class E on this basis.

Relevant Planning History

All relating to 141-145 Caversham Road.

880113/FUL - Change of use from laundrette to restaurant, with new toilets/kitchen - Permitted 13/03/89

910101/FUL - Covering structure over existing roof top plant - Permitted 17/05/91

210246/FUL - Alteration of fenestration - Permitted 27/09/21

210530/FUL - Installation of door at first floor and external staircase to rear - to be determined

Relevant Planning Policy and Guidance

Section 10 of the Planning and Compensation Act 1991 established a procedure that enables anyone who wishes to do so, to apply to the local planning authority to determine whether a proposed use or operation, or an existing operational development or an existing use of land, or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, is lawful, and is so, be granted a certificate to that effect.

A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future development. If granted by the local planning authority, the certificate means that enforcement action cannot be carried out to the development referred to in the certificate. However, the certificate will not protect from enforcement action by the planning authority if the specified use or development is then changed 'materially' without a planning application for it.

The certificate is not planning permission. The planning merits of use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

The NPPG states that 'The applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use (section 191 of the Town and Country Planning Act 1990), if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicants version of events less than probable, there is no good reason to refuse the application, provided the applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'.

Consultations

No consultations were carried out as part of this lawful development certificate.

Submitted Evidence

The applicant supplied the following evidence to support the use of the ground floor of 141 Caversham Road as a restaurant (Class E), received 15/09/21:

Site Location

Proposed Ground Floor Plan

Copy of Decision Notice for application ref: 880113/FUL

Analysis of Evidence

In order for a Lawful Development Certificate to be granted, the applicant must demonstrate that the use of the ground floor of 141 Caversham Road as a restaurant (Class E) began more than ten years before the date of the application, 14/09/21. The relevant time period is therefore 14/09/11 to 14/09/21. The applicant's evidence alone must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

It is not contested that the use of the ground floor of 141 Caversham Road, in a previous configuration, formed part of Standard Tandoori restaurant. Though no exact date has been provided for the commencement of the use as a restaurant, anecdotally it is acknowledged that this use was established in excess of ten years prior to the date of this application. However, the application can only be considered on the basis of the information supplied. In this instance, it relates to a subdivision of a former planning unit at 141-145 Caversham Road. It is stated on the application form that this subdivision occurred recently. This is corroborated by Google Maps images, dated October 2020 (see below) and officer site visit photograph in November 2021 (see above).



It is clear that the use of the ground floor of 141 Caversham Road as a restaurant, in the configuration as per the Proposed Ground Floor Plan supplied with the application has not been ongoing in a continuous fashion for in excess of the relevant time period. Regrettably, a Lawful Development Certificate for an existing use must be refused on this basis.

The applicant should note that it is not considered that the subdivision of the ground floor of 141-145 Caversham Road in the manner detailed within this submission, constitutes a material change of use. Were an application for a Lawful Development Certificate for the proposed use of 141 Caversham Road as a restaurant (Class E) to be applied for, a certificate would likely be granted.

Recommendation

REFUSE