

Delegated Application Report**Target Date: 28/05/19****Address:** 36 Donegal Close**Application No:** 190547/CLP**Proposal:** Certificate of Lawfulness for proposed use of 1 room within property for commercial use.**Case Officer:** Connie Davis**Target Date:** 28/05/19

Introduction & Proposal

The application site is a two storey terrace property on the southern side of Donegal Road. The surrounding area is residential. A certificate of Lawfulness has been applied for to confirm that the primary use of the dwelling will remain C3, following the opening of a beauty salon/ piercing business in the conservatory of the property. A beauty salon has the use class of Sui Generis.

It is not confirmed if the conservatory is attached to the main dwelling, or is the outbuilding which is included on the submitted location plan.

Plans/ Information Submitted:

Location Plan

Covering Letter

Application Form

Relevant Planning History:

None.

Summary of Consultations:

No consultations were undertaken as it is not required for an application of this type.

Relevant Planning Policy & Guidance:

Annex 8 "Lawfulness and the Lawful Development Certificate" of Planning Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements' sets out the procedure for assessing applications for certificates of lawfulness:

Para 8.26 states, "if the LPA are supplied with information satisfying them that the operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application." "The burden of proof in a LDC application is firmly on the applicant."

Assessment:

Relevant Planning Policy & 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 if 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 a planning permission. The planning merits of the 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 "In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved". In determining an application for a prospective development under section 192 of the Town & Country Planning Act a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes."

Assessment:

A Certificate of Lawfulness for a Proposed Development has been submitted as the applicant considers the proposal falls within the permitted development rights of the property.

In order to satisfy Section 192 of the Town and Country Planning Act 1990, the application should include the following information:

- Specify the land the subject of the application (including a plan identifying the land) ***Yes, a location plan was submitted.***
- Describe the use or operations proposed ***Yes it will be the conservatory only.***

- If the proposal includes a building, plans or drawings should be included to indicate its size and siting, sufficient to enable a determination to be made. ***It is unclear as to the exact location of the conservatory. The area has not been clearly labelled on the submitted location plan.***
- Indicate the paragraph of section 192(1) under which the application is being made (ie. use or operations) ***It will be a change of use from a conservatory to a beauty salon/ piercing business.***
- In the case of an application involving a proposed use, indicate the use of the land at the date of the application (or, if not used, the purpose for which it was last used) ***It has been a conservatory use C3.***
- Indicate any Use Class which the applicant considers applicable to the proposed use ***The application proposes only the conservatory be used for the beauty salon/piercing business. However it is not known the proposed intensity of the use of the business. No details have been submitted indicating how many appointments will be proposed per week, how many days a week the business will operate over and whether the business would be ancillary to the main dwelling house etc. This information is needed in order to make a judgement about whether the proposed business would result in a material change of use of the dwelling house.***
- The applicant's reasons, if any, for regarding the use or operations proposed as lawful ***Reasons given - as it will be a part time business there will be minimal foot traffic, there would be no reason that it would affect neighbours and no change in the building structure would be needed to commence business.***
- Such other information as the applicant considers to be relevant ***None.***
- A statement setting out the applicant's interest in the land, and the name and address of any other person known to the applicant to have an interest in the land. ***No land registry details have been submitted. On the application form, the letting agency details have been provided but it has not been clarified on the form that the letting agency have been informed in writing of this application.***

Conclusion

Insufficient details have been submitted to assess the proposal against section 192 of the Town and Country Planning Act 1990 (as amended) and

therefore it cannot be confirmed that the proposed use of the conservatory for a beauty salon/piercing business would be lawful. Sufficient details of the proposed business were required to be submitted to establish whether the proposed business would result in a material change of use of the dwelling house.

Recommendation

REFUSE Certificate

The above assessment is on the basis of the following submitted information:

Location Plan
Covering Letter
Application Form

Informatives:

The local planning authority has worked positively and proactively To notify the applicant that additional information would be required to be submitted in order for the certificate to be granted. Emails were sent to the applicant on 02/05/19 and 14/05/19 and the applicant was also called via telephone. The applicant did not respond to any communication made during the course of the application. As such, the certificate had to be refused based on insufficient information being provided.