

Delegated Application Report

Target Date: 19/10/2018

Address: 112 Henley Road

Application No: 181480 / CLE

Proposal: Certificate of lawfulness for existing use of premises as A5 hot food takeaway

Case Officer: Tom French

Introduction & Proposal

The application site comprises a ground floor commercial unit that is part of a small parade on the north side of Henley Road.

The applicant asserts that the existing use of the property is as a fish and chip shop (A5) called 'Ready Tasty Fish N Chips' and that it has been in continuous use as such since 1993.

Relevant Planning History:

890732 - FUL - Change of use from retail (A1) to fish and chip shop (A3) - Application Refused

930100 - ADV - Shop fascia sign and projecting sign - Application Refused

Relevant Planning Policy & Guidance:

Annexure 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:

Section 191(1) of the 1990 Act enables anyone to apply to the LPA for a decision on whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

The onus of proof in a LDC application is firmly on the applicant. Subsection (4) of section 191 provides that if, on an application under the section, the LPA 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 LPA or a description substituted by them (see paragraph 8.35 below), they shall issue a certificate to that effect; and, in any other case, they shall refuse the application'.

Para 8.3 states, 'by virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them **and** they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), *a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful"* if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.'

Consultation Responses:

Planning enforcement

The RBC Planning Enforcement Manager provided a consultation response stating that they have nothing in their records at this address

Environmental Health

The RBC Senior Environmental Health Officer confirmed that the application site was registered as a food premises in 1993, with the name of food business stated as 'READY TASTY' and type of premises stated as 'fish and chips only'. The application site has been regularly inspected (at intervals of 18 months to 2 years) as a takeaway restaurant since 2005. It was also confirmed that there is no record of enforcement action against the premises.

Submitted Evidence

The applicant supplied the following information:

- A statutory declaration signed 15th August 2018 by the applicant stating they have continually operated a fish and chip business at the application site since from May 1993
- Tax return For Reference: Ready Tasty Fish & Chips; Issue Address: Ready Tasty Fish & Chips, 112 Henley Road, Caversham, Reading, RG4 6DH; for the tax year ending 5th April 2008
- A letter from Reading Borough Council confirming the applicants place on a Safer Food Better Business Course seminar; dated 01/12/2008
- Consumer Protection Inspection Report For Environmental Health RBC noting the name of the premises as Ready Tasty, the address as 112 Henley Road, Caversham and dated 02/05/2009
- A statement from a Business Current Account in the name of the applicant noted as trading as: Ready Tasty Fish & Chips; dated 01/07/2011
- Print outs from the Food Advice Service website for Ready Tasty Fish & Chips at 112 Henley Road, Caversham, RG4 6DH showing food hygiene ratings issued 05/02/2016 and 08/03/2018
- Invoice for the servicing of a frying range that is addressed Read Tasty, 112 Henley Road, Reading, Berkshire, RG4 6DH; dated 14/03/17
- Food Safety Team Inspection Report from RBC noting the name of the premises as Ready Tasty Fish and Chips, the address as 112 Henley Road, Caversham, RG4 6DM and dated 08/03/2018
- Invoice from Reading Borough Council for Trade Waste collection for the address: Ready Tasty Fish and Chips, 112 Henley Road, Caversham, Berks, RG4 6DH; dated 07/04/2018
- Gas installation / safety record certificate signed by the operative undertaking the inspection and the applicant (as 'customer'). Address: Ready Tasty, 112 Henley Road, Caversham, RG4 6DH; dated 09/05/2018
- Six National Non-Domestic Rates Demand Notices for the address 112 Henley Road, Caversham, Reading, RG4 6DH. The description of property is: SHOP AND PREMISES. In chronological order the dates of issue are 10/03/2008, 08/03/2009, 13/09/2010, 11/03/2011, 10/03/2012 and 12/03/2013

- Eleven BT Business Bills addressed to the applicant at Ready, Tasty Fish, 112 Henley Road, Reading, RG4 6DH. The bill issue dates are as follows: 28/07/2010, 27/04/2011, 02/10/2012, 02/01/2013, 03/07/2013, 16/10/2014, 20/10/2015, 20/04/2016, 20/07/2017, 20/10/2017 and 20/01/2018

Assessment:

In order to grant a Certificate of Lawfulness for existing use as A5 (Hot Food Takeaway) at 112 Henley Road, sufficient evidence must be supplied to confirm that the property has been in this use continuously for a period of 10 years from the date the application was made. The relevant time period is therefore 24th August 2008 to 24th August 2018.

The letter submitted in support of the application, signed by the solicitor acting as agent for this application, states that the applicant has held the lease of the premises since May 1993 and has continuously operated them as a Fish & Chip business known as 'Ready Tasty Fish & Chips' since that date. This is supported by the statutory declaration submitted and the consultation response provided by the RBC Environmental Health Officer (see Consultation Responses above). The other submitted evidence (see Submitted Evidence above) notes the application address and business name as some variation of Ready Tasty Fish Chips (with the exception of the Business Rates Demand Notice that does reference the site's address, but does not include the name of any business). The provided documents are dated throughout the relevant time period with the earliest dated 01/12/2008 (a Business Rates Demand Notice from 10/03/2008 has been provided however this falls outside of the relevant time period) and the most recent is dated 07/04/2018.

In the absence of the information or evidence to contradict or make the applicant's version less probable, on balance, it is considered that the premises at 112 Henley Road, known as Ready Tasty Fish & Chips has operated as an A5 hot food takeaway restaurant for a period exceeding 10 years and is therefore immune to enforcement action. It is therefore considered a Certificate of Lawfulness for the use of the building as A5 should be granted.

Recommendation

Grant certificate

Location plan (not to scale)

