

Planning Department
Reading Borough Council
Civic Centre
Bridge Street
RG1 2LU

Our ref: 9919

28 February 2025

Dear Planning

**Certificate of Lawfulness to establish that planning permission 210854 has been lawfully implemented;
Change of use of ground floor from shop (Class E) to hot food takeaway (Class Sui Generis), and
installation of extract duct to rear at 56 Christchurch Road, Reading, RG2 7AZ**

Please find enclosed an application for a Certificate of Lawfulness submitted on behalf of Mr A Chima, Coffee Corner. The application seeks to confirm that Planning Permission **210854** for the '*Change of use of ground floor from shop (Class E) to hot food takeaway (Class Sui Generis), and installation of extract duct to rear*' at the above listed address has been lawfully implemented.

LEGAL CONTEXT

Section 56(1) of the Town and Country Planning Act 1990 (as amended) sets out that development is taken to be initiated:

- a) if the development consists of the carrying out of operations, at the time when those operations are begun;
- b) if the development consists of a change in use, at the time when the new use is instituted;
- c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

Section 56(2) provides that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.



The effect of Section 56 of The Act is that permission will remain legally extant and capable of full implementation **indefinitely**, if works or actions to implement them have commenced. These “material operations” are listed at Section 56(4) as including:

- a) any work of construction in the course of the erection of a building;
- aa) any work of demolition of a building;
- b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
- c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
- d) any operation in the course of laying out or constructing a road or part of a road;
- e) any change in the use of any land which constitutes material development.

For material operation rights under Section 56 to apply, commencement works must be comprised in the development and have been properly authorised in the first place. The following section of this Statement reviews the planning history of the site, clearly setting out that the details of the Planning permission provide the necessary authorisation for the material operations which have been undertaken by the applicant. It further assesses the planning conditions attached to the relevant planning permission, concluding that all relevant conditions have been satisfied as part of the implementation of material operations.

PLANNING HISTORY

On 25 May 2021, the applicant submitted to the Council a Full Planning Application described as the *‘Change of use of ground floor from shop (Class E) to hot food takeaway (Class Sui Generis), and installation of extract duct to rear’*

The Council registered this planning application, attributing reference 210854. On the 14 January 2022 the planning consent was issued. Application 210854 is subject to 14no. planning conditions.

It is worth noting at this point that there are instances where the wording or intentions of some of the conditions of this consent are duplicated, and instances where some conditions are listed as both pre-commencement and pre-occupation requirements. This leads to a level of uncertainty when interpreting the intended trigger points for the conditions attached to the permission.



Conditions:

- *1. The development hereby permitted shall be begun no later than three years from the date of this planning permission.*

This condition is a compliance condition and does not require the applicant to submit any further information for the written approval of the Council. The permission was issued on 14 January 2022 and therefore works to implement the development must have been lawfully commenced no later than 14 January 2025. This application is to demonstrate to the council's satisfaction that works have started on site in advance of the 14 January 2025.

A number of conditions are of relevance to the commencement of works on site, these are listed below and actions undertaken to demonstrate compliance with the requirements of these conditions are detailed accordingly:

- *7. PRE-COMMENCEMENT No development shall commence on site until an odour assessment has been carried out and a detailed odour management plan to include scaled plans, odour control specifications and a maintenance plan including a weekly schedule of cleaning has been submitted to and approved in writing by the Local Planning Authority. Reference shall be made to the DEFRA guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (Jan 2005) when assessing potential odours and selecting appropriate odour control methods. Thereafter, the development shall not be carried out other than in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.*

Whilst this condition is listed as a pre-commencement condition, it quite clearly relates to the onsite operational requirements of the approved use and so it could reasonably be argued that this condition be considered as a pre-occupation requirement for the purposes of this lawful development application. The requirement of the condition clearly doesn't go to the heart of the planning permission and doesn't require details that are required to be provided in order to implement the permission.

- *10. PRE-COMMENCEMENT A Waste & Litter Management Plan are submitted for the written approval of the Local Planning Authority before the use hereby permitted is made open to the public. The Waste & Litter Management Plan shall include details of where commercial waste is to be stored on site, how*



it is to be protected from vermin and how collected and how litter arising from customers of the use is to be managed. The Waste & Litter Management Plan shall be implemented and followed as approved.

This is a duplicated condition with requirements similar to condition 13 which was discharged through approved details (see below) on 18th November 2022.

- *11. PRE-COMMENCEMENT No development shall commence on site until a plan showing how two vehicle parking spaces can satisfactorily be provided on site is submitted to and been approved in writing by the Local Planning Authority. The vehicle parking spaces shall be provided in full accordance with the approved details prior to first occupation and thereafter kept free of obstruction and retained in accordance with the approved details and shall remain available for the parking of vehicles at all times.*

Details pursuant to this condition were submitted to and approved by the council on 18th November 2022 (See Appendix 1 for condition discharge notice). This condition has therefore been discharged in advance of works commencing on site.

- *12. PRE-COMMENCEMENT No development shall commence on site until a plan showing how four cycle parking spaces can satisfactorily be provided on site is submitted to and been approved in writing by the Local Planning Authority. The cycle parking spaces shall be provided in full accordance with the approved details prior to first occupation and thereafter kept free of obstruction and retained in accordance with the approved details and shall remain available for the parking of bicycles at all times.*

Details pursuant to this condition were submitted to and approved by the council on 18th November 2022 (See Appendix 1 for condition discharge notice). This condition has therefore been discharged in advance of works commencing on site.

- *13. PRE-COMMENCEMENT Notwithstanding the approved drawings, the development hereby permitted shall not be occupied or the approved use commence, whichever is the sooner, until details of refuse and recycling storage sufficient for the intended development has been submitted to and approved in writing by the Local Planning Authority. The details shall include measures to prevent pests and vermin accessing the storage. The approved details, including pest and vermin control*



measures, shall be fully implemented before first occupation or the use first commences, whichever is the sooner, and the areas of land so provided shall not be used for any purposes other than the storage (prior to disposal) or the collection of refuse and recycling and shall be thereafter retained and maintained as such, unless otherwise agreed in writing by the Local Planning Authority.

Details pursuant to this condition were submitted to and approved by the council on 18th November 2022 (See Appendix 1 for condition discharge notice). This condition has therefore been discharged in advance of works commencing on site.

- *14. PRE-COMMENCEMENT Prior to first occupation of the development hereby approved, a Delivery and Servicing Plan to manage how vehicles shall access the development without creating safety concerns and congestion based on the anticipated number of vehicle trips associated with delivery and servicing vehicles for the development shall be submitted to the Local Planning Authority for approval in writing. Thereafter deliveries and servicing will be carried out in accordance with the approved Delivery and Servicing Plan.*

Whilst this condition is listed as a pre-commencement condition it also references that details need to be submitted and approved prior to first occupation of the development. As per condition 7 above, the condition quite clearly relates to the onsite operational requirements of the approved use and so it is considered as a pre-occupation requirement for the purposes of this lawful development application. The requirement of the condition clearly doesn't go to the heart of the planning permission and doesn't require details that are required to be provided in order to implement the permission.

Compliance Conditions

In addition to the above referenced conditions the following compliance conditions are listed on the planning permission decision notice and are relevant to this submission for a lawful development certificate as they direct the location of installed elements of the scheme. The requirements of these conditions have been adhered to and are discussed in the 'Implementation' section of this letter.

- *2. The development hereby permitted shall ONLY be carried out in accordance with the following approved plans:*
 - *Drawing No: A-1000 Rev. D – Site Location and Proposed Site Plan (received 09/06/21)*
 - *Drawing No: A-1200 Rev. A – Existing and Proposed Ground Floor Plans (received 25/05/21)*



- Drawing No: A-1210 Rev. B – Proposed Elevations (received 09/06/21) Noise Assessment by Paragon Acoustic Consultants, ref: 20210902_4887_ENA_02.docx (received 02/09/21)

- 3. *The extract duct shall be as specified on the plans and/or application forms unless otherwise agreed in writing with the Local Planning Authority.*
- 6. *The extract duct shall be installed in accordance with the approved Noise Assessment (ref: 20210902_4887_ENA_02.docx, by Paragon Acoustic Consultants) before the use hereby permitted is made open to the public. Thereafter the extract duct shall be managed and maintained in accordance with the approved noise mitigation specifications, with an ongoing schedule of cleaning and maintenance works to be made available for inspection by Council Officers on request.*

The remaining conditions are compliance conditions relating to the operation of the site and are summarised as:

- 4. *No amplified sound or music shall be played at the premises outside the following times: 9am to 11pm on Mondays to Saturdays and 9am to 10pm on Sundays or Bank Holidays.*
- 5. *The specific sound level of the plant/equipment hereby approved, (LAeq,TR) (with reference to BS:4142) as measured at a point 1 metre external to the nearest noise-sensitive facade shall be at least 10dB below the pre-existing background sound level, LA90,T when all plant/equipment (or any part of it) is in operation. The rating level, LAr,Tr (specific sound level plus any adjustment for the characteristic features of the sound) as measured at a point 1 metre external to the nearest noise- sensitive façade (habitable window of a dwelling) shall not exceed the pre-existing background sound level, LA90,T when all plant/equipment (or any part of it) is in operation.*
- 8. *The premises shall not be used by members of the public outside the hours of 9am to 11pm on Mondays to Saturdays and 9am to 10pm on Sundays or Bank Holidays.*
- 9. *Hours for deliveries and/or waste collection shall be restricted to 9am to 6pm on Mondays to Saturdays and 10am to 5pm on Sundays or Bank Holidays.*

In order to lawfully implement the planning permission, the applicant must have done so no later than 14



January 2025 (condition 1) in accordance with the approved drawings (condition 2) and in accordance with the various relevant conditions listed above.

IMPLEMENTATION

Cycle Parking details and installation

In order to discharge conditions 11, 12 and 13, details of the cycle parking, car parking and refuse collection arrangements were submitted to the Council on 6th July 2022 and subsequently approved on 18th November 2022 (App Reference: 220989 - See Appendix 1 for condition discharge notice). This information slightly varied the approved locations of the bin store and cycle store.

The details submitted to discharge this condition are shown in Figure 1 below which show the cycle store to be located between the car parking area and bin stores within the rear car park. 2no twin lockable cycle lockers designed to hold a total of 4 bicycles supplied by Cyclehoop Ltd have been installed and a photo showing the installed cycle store is provided at Appendix 2.



Figure 1 – approved cycle parking, carparking and bin storage details, submitted to discharge conditions 11, 12 and 13



Extract duct details and installation

The approved extract duct has been installed in accordance with the approved elevations plan (included at Figure 2 below) and in accordance with the details included within the approved Noise assessment (ref: 20210902_4887_ENA_02.docx, by Paragon Acoustic Consultants). The approved Noise Assessment includes appearance details (included at Figure 3 below) and is referenced through condition 3 and 6.

A photo showing the extract duct is provided at Appendix 3. The extract duct installation was signed off following site inspection by Stroma Building Control on Wednesday 8th January 2025.



Figure 2 - Approved proposed elevations with the location of the extract duct shown to the rear of the premises.

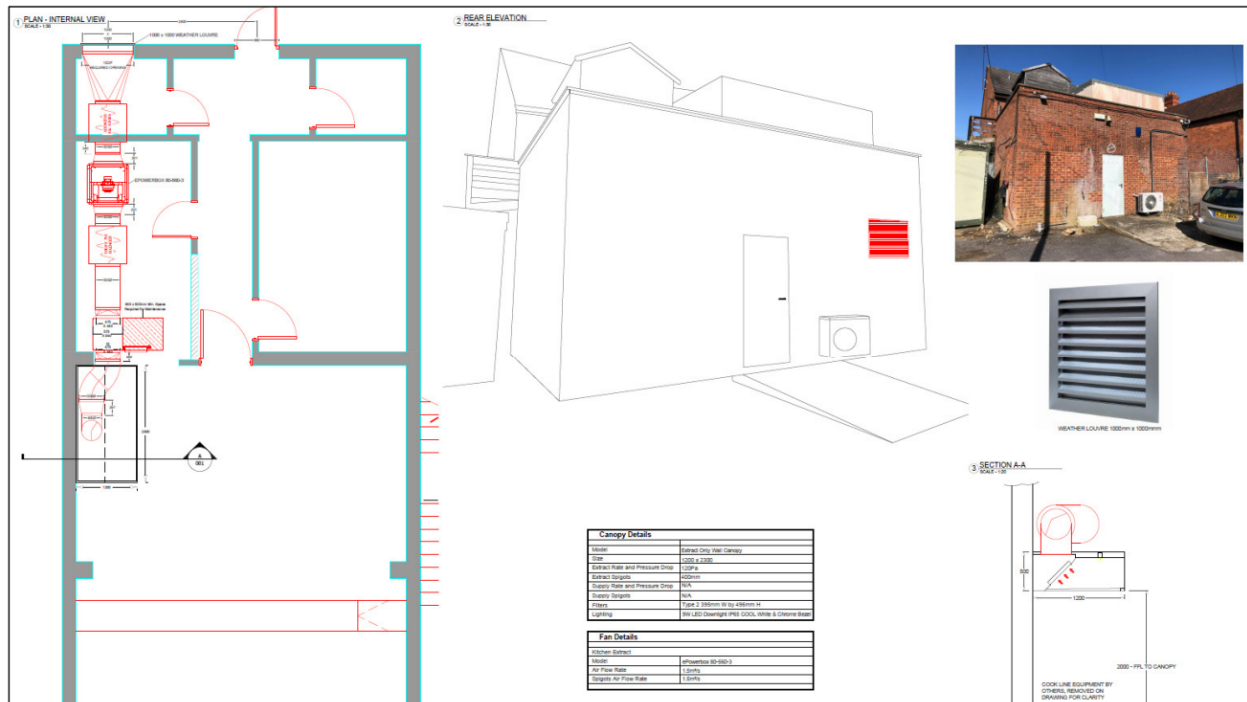


Figure 3 –Extract duct details from the approved Noise assessment report (ref: 20210902_4887_ENA_02.docx, by Paragon Acoustic Consultants)



As discussed above, the list of conditions attached to the planning permission for the site has a number of issues which make it difficult to interpret. Conditions 7 and 14 are both referenced as being pre-commencement conditions with condition 14 referred to as being both a pre-commencement and a pre-occupation condition. Conditions 7 and 14 both require information to be submitted relating to the operation of the proposals and therefore should be considered as being pre-occupation requirements. The information required through both conditions does not go to the heart of the planning permission itself.

We have demonstrated through the submitted information that the Applicant has implemented the permission through the installation of the approved cycle storage and extract duct and has therefore undertaken works that exceed 'de minimis' which is taken to mean: too small to be meaningful or taken into consideration; immaterial. This work exceeds by some margin, something that could be construed as 'immaterial'.

The work undertaken demonstrates that the changes to the existing arrangement on the site, as approved by the permission, have been lawfully implemented prior to the expiry of permission 210854 (condition 1) and in accordance with conditions 2, 3, 6, 10 (duplicate of condition 13 requirements), and 11, 12 and 13.

CONCLUSION

The application is to be determined based upon the facts of the case, matters of planning law and relevant judicial authority.

The works evidenced within this application are a material operation constituting the commencement of development as specifically confirmed at Section 56(4) of the Town and Country Planning Act 1990 (as amended) given that, objectively, they are:

- (a) comprised within the approved development; and
- (b) material insofar that they are not de minimus.

This Statement and supporting documentation demonstrate that the applicant has discharged the necessary pre-commencement conditions and has followed approved plans in the commencement of development on site as clearly evidenced in the photographs. The information provided through this



application demonstrates that the works undertaken constitutes the lawful commencement of development in accordance with the approved plans and relevant conditions prior to the expiry of the permission on 14 January 2025.

Consequently, having properly applied the provisions of the Town & Country Planning Act 1990 (as amended) and having had regard to relevant case law, the applicant has demonstrated on the balance of probability that planning permission 210854 has been lawfully implemented.

The Local Planning Authority must therefore issue a Certificate of Lawful Development accordingly.

Yours faithfully,
BELL CORNWELL LLP

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Associate
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Appendix 1 – Condition discharge notice



Bell Cornwell LLP
Unit 2 Meridian Office Park
Osborn Way
Hook
RG27 9HY

Frances Martin
Executive Director for Economic Growth
and Neighbourhood Services

Civic Offices, Bridge Street,
Reading, RG1 2LU

☎ 0118 9373787

Our Ref: 220989

Your Ref: PP-11357076-v1

Direct ☎:

e-mail:
Chukwudi.Onwudinanti@reading.gov.uk

18 November 2022

Your contact is: Chukwudi Onwudinanti, Planning

Dear Bell Cornwell LLP,

TOWN AND COUNTRY PLANNING ACT 1990

Application Reference: 220989

Application type: Approval of Conditions

Address: 56 Christchurch Road Reading RG2 7AZ

Proposal: Application for approval of details reserved by conditions 11 (Parking spaces), 12 (Cycle parking) and 13 (refuse and recycling storage) of application 210854

Thank you for your application for discharge of conditions 11, 12 and 13 for planning permission 210854. As these relate to pre-commencement conditions among others, this discharge of conditions at this time is only for the conditions stated in this decision. The following documents are therefore approved:

Conditions 11 - Two Vehicle Parking Spaces

Condition 12 - Four Cycle Parking Spaces

Condition 13 - Sufficient Refuse and Recycling Storage

- Drawing No A-1500 Rev C: Car parking Plan and Binstore received 31st October 2022

Please note that it is the responsibility of the developer to ensure that all relevant conditions are complied with during the construction and/or subsequent use of the development.

Should you wish to discuss this matter further, please contact me by email or the direct line as above.

Yours sincerely

C. Onwudinanti

Chukwudi Onwudinanti



Appendix 2 Installation of cycle store within rear car park





Appendix 3 – Image of duct installation to rear of premises

