

DELEGATED APPLICATION REPORT

Ward: Redlands Ward

App Ref: PL/25/0352 Lawful development: Existing use

Address: 56, Christchurch Road, Reading, RG2 7AZ

Proposal: 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

Applicant: Mr Tony Chima

Received date: 05/03/2025

Target Decision date: 30/04/2025

Case Officer: Huimin Chen

1. SITE DESCRIPTION

The application site is a two storey detached building located at the junction with Whitley Park Lane. It lies within the Christchurch Road Local Centre, with the building forming the western end of the Key Frontage. The ground floor is permitted for use as a hot food takeaway under permission PL/21/0854. Residential accommodation is located on the first floor, accessed via an external staircase and terrace. A yard, accessed via Whitley Park Lane, is situated to the rear of the building. A tree, subject to TPO 18/07, is located to the west of the building. The Redlands Conservation Area is approximately 25m to the northeast of the site. The proposal site falls within an Air Quality Management Area. The surrounding area comprises a mix of residential and commercial uses.



Fig 1: Site Location Plan

2. PROPOSAL AND SUPPORTING INFORMATION

The proposal seeks a Certificate of Lawfulness to establish that planning permission PL/21/0854 has been lawfully implemented. Planning permission PL/21/0854, granted on 14th January 2022, approved the change of use of the ground floor from a shop (Class E) to a hot food takeaway (Sui Generis), along with the installation of an extract duct to the rear. This permission expired on 14th January 2025. Apart from pre-commencement condition 7, pre-commencement conditions 11 (Vehicle Parking), 12 (Cycle Parking), and 13 (Refuse and Recycling Storage Arrangements) were discharged on 18th November 2022.

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.
REASON: These details are required due to insufficient information being contained within this submission and to safeguard the amenity of adjoining properties and to protect the general environment in accordance with Policy CC8 of the Reading Borough Local Plan 2019.

Fig 2: Pre-commencement condition 7 of permission PL/21/0854

As per the planning statement received on 5th March 2025, the approved extract duct was installed and signed off following a site inspection by Stroma Building Control on 8th January 2025, prior to the expiry of the permission. The cycle storage was also installed, although the installation date is not specified in the planning statement.

The planning statement contends that pre-commencement condition 7 (Odour Assessment) could be considered a pre-occupation requirement rather than a true pre-commencement condition, arguing that it does not require details necessary to implement the permission. As such, the proposal seeks a Certificate of Lawfulness for the implementation of the permission.

Plan/information considered:

- Approved Site Location Plan and Block Plan received 5th March 2025.
- Planning Statement received 5th March 2025.
- Elevations received on 18th March 2025.
- Scope of Works received on 18th March 2025.

Relevant Planning History:

- PL/99/1689 - Conversion of roofspace into a self-contained flat above existing shop on the ground floor and flat on the first floor, at numbers 56/56A Ch ristchurch Road. Approved on 10/01/2000.
- PL/06/1153 - Change of use of existing ground floor hire shop (A1 use) to a letting agency (A2 use). Approved on 18/08/2006.
- PL/13/0292 - Two storey side extensions and first floor rear extension to create two 2-bed flats and one 1-bed flat (resubmission of 12/00118/FUL). Refused on 05/04/2013.
- PL/20/1796 - Change of use of ground floor from shop to hot food takeaway (Class Sui Generis), with alterations to access at rear. Refused on 18/03/2021.
- PL/21/0854 - Change of use of ground floor from shop (Class E) to hot food takeaway (Class Sui Generis), and installation of extract duct to rear. Approved on 14/01/2022.
- PL/22/0989 - Application for approval of details reserved by conditions 11 (Parking spaces), 12 (Cycle parking) and 13 (refuse and recycling storage) of application 210854. Conditions discharged on 18/11/2022.

3. CONSULTATIONS

- Legal Consultations, Reading Borough Council – No objection.
 - Environmental Protection Consultations – There is no objection to the odour assessment being considered a pre-occupation condition.
 - Planning Enforcement Consultations, Reading Borough Council – No response received.
 - Business Rates – No response received.
- Please refer to the Appraisal below for further assessment.

4. APPRAISAL

As stated in the submitted planning statement, the approved extract duct and cycle store were installed prior to the expiry of planning permission PL/21/0854. In order to confirm whether the permission has been lawfully implemented, the assessment must assess against:

- 1) whether the installation of the approved extract duct and cycle store occurred following the discharge of all pre-commencement conditions, and
- 2) prior to the expiry of the permission PL/21/0854.

With regard to planning permission PL/21/0854, Conditions 7, 11, 12, and 13 are classified as pre-commencement conditions. Apart from Condition 7, the remaining three pre-commencement conditions were discharged under permission PL/22/0989 on 18th January 2022. There is no enforcement comment

received in terms of this site. The submitted planning statement indicates that the approved extract duct was installed on 8th January 2025. Although no specific installation date for the cycle store is provided, the installation of the approved extract duct is considered to have occurred prior to the expiry of the permission, thereby satisfying requirement 2).

In relation to pre-commencement Condition 7, the purpose of the Odour Assessment is to mitigate the impact of the extract duct when operational, specifically regarding cooking odours affecting nearby sensitive receptors. Its intent was not to establish baseline odour levels for comparison before and after implementation, and therefore, it does not constitute a true condition precedent. The relevant test is whether the breached condition is a true condition precedent and “goes to the heart of the permission.” On this basis, the Legal Team could confirm that the condition would have been equally effective if it had been worded as a pre-occupation condition. Therefore, the implementation is considered to satisfy requirement 1).

Overall, the proposal is considered to have been lawfully implemented. The Certificate of Lawfulness can be issued based on the assessment above. It is considered necessary for an informative to be added to be decision notice specifying that condition 7 and other pre-occupation conditions are still required to be submitted and approved prior to the occupation or use of the approved development, and compliance conditions adhered to, ensuring that the operation of the approved use remains in compliance.

5. RECOMMENDATION

GRANT

Pre-commencement Conditions 11, 12, and 13 were discharged prior to the expiry of planning permission PL/21/0854. It is considered that pre-commencement Condition 7 could be equally effective if it had been worded as a pre-occupation condition. Additionally, the submitted planning statement indicates that the approved extract duct was installed prior to the expiry of planning permission PL/21/0854.

In the absence of information or substantial evidence to contradict or make the applicant's version less probable, it is considered, on balance, that the premises at 56 Christchurch Road have been lawfully implemented in accordance with permission PL/21/0854. Therefore, it is considered that a Certificate of Lawfulness confirming that planning permission PL/21/0854 has been lawfully implemented should be granted. The certificate should be read in conjunction with planning permission PL/21/0854 and approval of details permission PL/22/0989.

Informatives:

1. Prior to the first occupation of the approved development, discharge of conditions applications are required to be submitted to and approved in writing by the local planning authority in relation to conditions 7 (Odour Assessment) and 14 (Delivery and Servicing Plan). A series of compliance-worded conditions are also required to be adhered to.
2. Since the original planning permission was granted, the reference numbering of applications has changed. At the time of the permission the reference number was 210854, whereas applications are now referenced with the inclusion of ‘PL/___/___’. Permission 210854 is therefore now referred to as PL/21/0854, as referenced above.