
Delegated report Officer: Tom Beardsmore

Application ref. DMPN/2019/0895

Certificate of Lawfulness for the existing use as a chinese takeaway (Use Class A5) to ground floor with associated office, storage, staff changing and w/c facilities at first floor at 62-64 HIGH STREET, MELBOURNE, DERBY, DE73 8GJ

Valid date: 01/08/2019

Consults expired: 27/09/2019

EIA development? No

This decision is delegated to officers under the terms of the current Scheme of Delegation.

Relevant planning history

None

Responses to consultations and publicity

Melbourne Parish Council - No objections

Council's Solicitor - As there is significant evidence that the business has been operating in excess of 10 years, the certificate should be issued.

Relevant policy, guidance and/or legislation

The relevant national policy and guidance is:

- Planning Practice Guidance (PPG)

The relevant legislation is:

- Section 191 of the Town and Country Planning Act 1990

Planning considerations

This application falls to be considered under Section 191 of the 1990 Act in that the development is claimed to be lawful due to the passage of time without the Local Planning Authority (LPA) having taking enforcement action against it. The LPA needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage. Whilst the onus is on the applicant to provide sufficiently precise and unambiguous evidence to justify the grant of a certificate, on the balance of probability, the PPG also states that if a LPA has no evidence itself, nor any from others, to contradict the applicant's case or make it less than probable, there is no good reason to refuse the application. In this instance, the assessment turns on whether the applicant has submitted sufficient evidence to prove that the business has been operating for a period in excess of 10 years.

Planning assessment

The applicant has supplied the following:

- Invoices and bills relating to the use of the property.
- Floor plans which show how the rooms are currently being used.

- Location Plan which shows the curtilage of the property.

The applicant's supporting evidence appears to show invoices and bills which relate to the property and its use as a Chinese Takeaway. The Council has no record of any enforcement cases relating to the property. The PPG states *"if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability"*. Upon visiting the site, it would appear the building is currently still being used as a hot food takeaway and the location plan provided is accurate. The Council holds no counter evidence to that supplied by the applicant and the evidence presented as a whole is sufficient, as has been advised by the Council's solicitor. As such it is considered that the evidence supplied by the applicant is sufficient to demonstrate that on the balance of probability the land has been in continuous use as a hot food takeaway in excess of a 10 year period and as such is now lawful.

Recommendation

Approve

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation made:	30/09/2019
Report agreed:	01/10/2019
Authorised officer:	Chris Nash
