
2024/0224

Mr Mohammad Reza Saadati

Lawful Development certificate for proposed use as a restaurant (Use Class E(b))

27 High Street, Wombwell, Barnsley, S73 8HB

Site Description

The application site is commercial unit located on High Street, Wombwell. Online imagery shows that the unit was last in use as a European supermarket/convenience store but this use has since ceased. The property has glazing to the front with a bright orange roller shutter. The upper floor of No.27 appears to be finished in painted brick/stone.

The unit is centrally positioned between two other retail units which form a terrace. The building is arranged over two storeys but has a very low eaves height, with the upper floor window being relatively small. The adjoining units include a fish & chip shop and a barbers.

The street scene is relatively characteristic of a local high street. The ground floor units are occupied by a mixture of shops and commercial uses including travel agents; hot food takeaways and hairdressers, with a large public house being directly opposite.

The upper floors of the buildings typically have a traditional appearance finished in brick/stone. Although the nearby building at No.23/23a has an unusual art deco character.

There is no parking directly outside the application site, though a car park is provided approximately 110m away off George Street. The northern side of High Street has a wide pedestrianised footway as well as some on-street parking provision.

Planning History

2005/1879 - Change of use from retail (Class A1) to hot food takeaway (Class A5), GRANTED, 16/1/2006

B/05/0038/WW - Change of use from retail shop (Class A1) to Chiropractor Surgery (Class D1), GRANTED, 17/2/2005

Proposed Development

The applicant has submitted an application for a Lawful Development Certificate for the proposed change of use from a supermarket/shop to a restaurant (Use Class E(b)).

Under Section 192 of the Town and Country Planning Act 1990 Section 192 (1) provides that if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, may make an application for the purpose to the Local Planning Authority specifying the land and describing the use or operations in question. Section 192(4) then provides that if, on an application under this section, the Local Planning Authority are provided

with information satisfying them that the use or 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 shall refuse the application.

The applicant recently submitted a pre-application enquiry regarding the proposal but instead described the use as a '*hot food takeaway*'. Based upon the information submitted, the applicant was therefore advised that the change of use would require planning permission due to use falling with Use Class Sui Generis, but that an application was unlikely to be supported due the proliferation of takeaways within area. Since then, the applicant has confirmed that the food provision to be mostly consumed onsite and operate as a restaurant rather than a takeaway.

Information provided within the application submission states that the restaurant would operate between 7am – 11pm 7 days a week. Though this would be subject to obtaining the correct license via the Council's Regulatory Services department.

No alterations or extensions to the building are proposed, and this certificate of lawfulness relates to the change of use only.

Consultations

Legal - Use Class E is the modern extended use class in the Town and Country Planning (Use Classes) Order 1987 covering a broad range of uses. Land can be changed from any use in use class E to another use within the class without planning permission. Assuming the land is currently lawfully used as Class *E(a) - Display/Sale of goods other than hot food* it can lawfully change to any other use within Class E without a grant of planning permission including *Class E(b) - Sale of food and drink for consumption mostly on the premises*.

Representations

There is no statutory requirement for Local Planning Authorities (LPA) to consult third parties, including neighbouring residents or parish councils on a lawful development certificate (LDC) application since an LDC application is a matter of fact and law and is not determined on its planning merits or judged against National or Local planning policies or guidance.

Nevertheless, the application documents are still available to view on the Council's planning explorer website.

No representations have been received.

Assessment

The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Use Class E(b) as follows:

'For the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises.'

In this instance the last operational use of the property fell with Use Class E(a) – display or retail sale of goods. The Use Class Order allows uses to change between those which fall within Class E without requiring formal planning permission. This means the proposed change of use to an operation falling within Use Class E(b) is acceptable, subject to the use strictly according with the definition.

The indicative floorplans submitted with this application indicate that the customer seating area would be at the ground floor level, whilst the kitchen would be at the first floor. Photographs of the property have also been submitted to support the proposal. Based on the information provided, the Local Planning Authority are satisfied that the proposed use falls within the definition of Use Class E(b) subject to the consumption of foods and drinks being primarily on site and a limited takeaway option served.

Should the operation change or differ from the information submitted within this application, or fall outside the scope of Use Class E(b), formal planning permission may be required.

In conclusion, the development as proposed is considered to accord with the definition of Use Class E(b) and therefore the Certificate of Lawful Development should be granted.

Recommendation: Grant