DELEGATED REPORT / CASE OFFICER'S ASSESSMENT

Ref No: ST/0818/19/CLU
Proposal: Application for a Lawful Development Certificate to confirm the existing use of the premises as a hot food takeaway falling within use class A5 (hot food takeaways) of the Town and Country Planning (Use Classes) Order 1987.
Location: 1 North Road
Boldon Colliery
NE35 9AR

Site Visit Made: 04/11/19

Relevant policies/SPDs N/A

Description of the site and of the proposals

This application relates to a property at 1 North Road, Boldon Colliery and appears as one of a row of three commercial properties (1 – 3 North Road), with what appears to be a residential property (1 Hubert Street) behind it.

The land for which the certificate is sought is shown edged red on the plan received 29/11/2019 accompanying the application ('the site'), which appears to correspond with the property address (1 North Road) provided on the planning application form received. The application is determined on the basis of this site location plan, which has superseded previous location plans received on 13/11/2019 (which also included 1 Hubert Street) and 08/10/2019 (which also included 1 Hubert Street and 2 & 3 North Road).

The applicant seeks a Lawful Development Certificate (LDC) for the existing use of the site. The applicant claims that the use of the land which is the subject of the current application has been in continuous use for the last ten years, claiming that this use has operated at the premises since 1980.

The use for which the LDC is sought, which has been amended through the assessment of the LDC is described as, '*Application for a Lawful Development Certificate to confirm the existing use of the premises as a hot food takeaway falling within use class A5 (hot food takeaways) of the Town and Country Planning (Use Classes) Order 1987.'* The identified area is clearly identified on the plan attached to the second schedule.

Section 171B(3) of Town and Country Planning Act 1990 (the "1990 Act") provides that no enforcement action may be taken in respect of a material change of use, amounting to a breach of planning control, after the period of ten years beginning with the date of the breach.

The evidence submitted as part of this application includes:

1. A signed application form for a Lawful Development Certificate for an Existing use which includes confirmation of the applicant's interest in the land and the name and address of other persons known to the applicant to have an interest in the land and confirmation that these persons have been notified of the application (received 08/10/19);
2. Two undated photographs of Yengtze River Chop Suey House/Takeaway (received 08/10/19);
3. A Certificate of Registration for a hot food sales establishment from South Tyneside Council Environmental Health (dated 29/02/80) 1 North Road signed dated (received 08/10/19);
4. A Covering Letter from the applicant (received 08/10/19);

5. An invoice for accountancy services dated 05/08/10 for Yengtze River, 1 North Road (received 08/10/19);
6. A summary of Companies House information for New Yengtze River Limited dated 10/02/10 (received 08/10/19);
7. A Directors' Report and Financial Statements for the year ended 31/01/10 for New Yengtze River Limited (received 08/10/19);

Further to the submitted information as part of the application, local planning authority officers have made contact with the Council's Environmental Health Team to obtain details of food hygiene inspections carried out and the Council's Business Rates Department to obtain details of dates that business rates were paid.

Publicity / Consultations N/A

Assessment

Sub section (4) of section 191 of the Town and Country Planning Act 1990 provides that if on application under this section, the Local Planning Authority (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 local planning authority or a description substituted by them, the LPA shall issue a lawful development certificate.

The courts have held that the relevant test by which an application for a certificate of lawfulness for an existing use is on the 'balance of probability'. The LPA should not refuse an application based on the more rigorous criminal burden of proof 'beyond reasonable doubt'.

Subsection (6) of section 191 of the 1990 Act provides that the lawfulness of any matter for which a certificate is in force shall be conclusively presumed. The statement in a LDC of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

As indicated above, Section 171B(3) of the 1990 Act provides that no enforcement action may be taken in respect of a material change of use after the period of ten 10 years beginning with the date of the breach. Section 191(2)(a) of the 1990 Act provides that any use will be lawful if no enforcement action may be taken in respect of it.

The burden of proof in applications under Section 191 of the 1990 Act rests with the applicant, and local planning authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted.

An application for a LDC is assessed purely in the evidence submitted in support of it and any other evidence that the Council may have (such as its own records) or may obtain during processing of the application. The planning merits of the development are not relevant to the consideration of an LDC application.

Assessment of Evidence

The evidence supplied by the applicant suggests that the property may have been in use as a takeaway since 1980. This date is provided on the application form and the certificate issued by Environmental Health officers in 1980 also suggests that a hot food takeaway business was officially registered. However, this does not demonstrate that a takeaway was operation on this date, nor does it demonstrate that a continuous us has taken place since then. No information for the period between 1980 and 2009 is provided.

The information provided referring to 2009 - 10 includes an invoice for accountancy services a summary of Companies House information and a Director's Report for New Yengtze River Limited. None of these documents refer to any period before 2009 or after 2010, nor do they provide precise and unambiguous information to evidence a lawful A5 use operating from the premises continuously over the preceding ten years or more from the date of the application.

Historic photos are also provided, but these are undated and do not demonstrate evidence of a lawful A5 use either.

It is considered that the applicant's evidence, taken on its own, is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that a hot food takeaway has operated from the property for a continuous period of ten years and justify the grant of a certificate.

The records obtained by the case officer comprise of written confirmation from officers within the Council's Business Rates Department of payment business rates for a hot food takeaway for a continuous period from 01/04/1990 to the present day, and details of food hygiene inspection dating from 26/11/2004 with regular inspections through to the most recent inspection on 16/10/2019. These records are considered to provide clear and unambiguous information upon which a judgment can be made as to whether a lawful use has occurred.

When the applicant's evidence is considered alongside the additional records available to LPA officers, it is considered that sufficient evidence is available to demonstrate, on the balance of probability, that a hot food takeaway has operated from the property for a continuous period of at least ten years.

As such, the use is considered, on the balance of probability, and on the basis of the available evidence, to be immune from enforcement action under planning legislation and therefore lawful.

Summary

On the basis of the evidence submitted, it is recommended that a certificate of lawful use is granted in respect of the land described above (as shown in Plan 1 attached to the second schedule) for use of the site as a hot food takeaway falling within Use Class A5 'Hot Food Takeaways' of the Town and Country General Planning Use Classes Order 1987 (as amended).

In assessing this application due regard has been had to the requirement of section 149 of the Equality Act 2010.

Recommendation

Grant Permission No Conditions

List of approved plans for standard note

Plan Reference

Site Location Plan TQRQM19332173947636 received 29/11/2019

Case officer: Chris Stanworth
Signed:
Date: 03/12/19

Authorised Signatory:
Date: