
Site Address:	61 London Road, Waterlooville, PO7 7EX		
Proposal:	Certificate of lawfulness application for hot food takeaway on ground floor.		
Application Type:	Certificate of Lawfulness		
Application No:	APP/22/00614	Expiry Date:	21/09/2022
Applicant:	Mr Q Chen		
Agent:	Ms Ellen Han	Case Officer:	Lewis Ford
	TTS Legal Ltd		
Ward:	Waterloo		

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

The application site, hereon referred to as "the Property", is 61 London Road, Waterlooville, PO7 7EX. The Property is currently occupied by a Chinese food takeaway; "The Light".

The Property comprises a two-storey terraced building – with single storey front and rear additions – on the north-western side of London Road in the defined Waterlooville Town Centre. The front of the property off London Road includes pink tiles and an aluminium door and windows, along with red signage populated with white and yellow text. In comparison, the rear of the property off Swiss Road includes a flue and a wooden / tin single storey structure.

2 Planning History

ADV/00450 – CONSENT in August 1969 for display of advertisement.

ADV/00996 – CONSENT in May 1987 for re-siting of existing illuminated fascia sign.

34443 – PERMISSION in March 1987 for new shop front.

88/50545/ADV – WITHDRAWN APPLICATION in March 1988 relating to advertisements on litter bins.

3 Proposal

Application for a Certificate of Lawfulness relating to Hot Food Takeaway (HFT) (Sui Generis) on ground floor. The Applicant claims that the Property has been used for this purpose continuously for a period in excess of 10 years.

4 Policy Considerations

National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)
Town and Country Planning Act 1990
Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Councillor Gwen Robinson

No comments received.

Councillor Mike Sceal

No comments received.

Councillor Peter Wade

No comments received.

Business Rates Team

The business ratepayer for 61 London Road, PO7 7EX is "The Light Hampshire Ltd" since 10 October 2016. The business is in receipt of 100% Small Business Rates Relief and, therefore, no charge payable since 2016. REDACTED was a director of this company from 28 June 2016 to 02 March 2021. REDACTED has been the sole director since 02 March 2021.

Developer Services, Southern Water

Southern Water requires a formal application for any new connection to the public foul sewer to be made by the Applicant or Developer. To make an application, visit Southern Water's Get Connected service:

<https://developerservices.southernwater.co.uk/> and please read our New Connections Charging Arrangements documents which are available on our website via the following link:

<https://www.southernwater.co.uk/help-advice/connection-charging-arrangements>

The Applicant should be advised that a wastewater grease trap should be provided on the kitchen waste pipe or drain installed and maintained by the owner or operator of the premises.

It should be noted that under the Water Industry Act 1991 it is an offence to "*throw, empty, turn or permit to be thrown or emptied or to pass into any drain or sewer connecting with a public sewer ... any matter likely to injure the sewer or drain or to interfere with the free flow of its contents*".

It is possible that a sewer now deemed to be public could be crossing the development site. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its ownership before any further works commence on site.

For further advice, please contact Southern Water, Southern House, Yeoman Road,

Worthing, West Sussex, BN13 3nX; Tel: 0330 303 0119); Website: southernwater.co.uk; or by email at: SouthernWaterPlanning@southernwater.co.uk.

Officer comment: *Not relevant for an application for a Certificate of Lawfulness of existing development. As part of this application, regard cannot be given to any objections to this application on planning grounds, nor can planning conditions be imposed if a Certificate is granted.*

Environment Agency

No comments received.

Environmental Health Manager, Community Group

There has been a food case at the premises at 61 London Road, Waterloooville, since 2002 when we moved to the Acolaid database, but our current records only go back to an inspection in 2003 when it was the Coral House. The business subsequently changed ownership in 2009 and was known as The Light.

We have Food Premises Regulation Forms on our database for 2008, 2009, and 2011. Premises are required to register when there is any change in ownership for the food business, this is a legal requirement. I am, therefore, able to confirm that the premises has been operating as a hot food takeaway in excess of 10 years.

It would appear that there is an existing extract system in place, serving this hot food takeaway. Also, I have found no record of any complaints of noise, vibration, or odour related to the business or extraction system. Therefore, I can advise there are no adverse comments from this office in relation to this particular application.

Portsmouth Water Company

Please find attached the plan(s) showing the approximate position of water mains at the requested location.

Service connections are not shown but it should be assumed that all premises are supplied from the water distribution network. Other connections not relation to properties, such as field supplies, may also exist so we would suggest a visual/CAT scan/Ground Radar Survey is undertaken prior to any hand or mechanical excavation.

Safe digging practices in accordance with HSE publication HSG47 "Avoiding Danger from Underground Services" must be used to verify and establish the actual position of the mains, pipes, services and other apparatus on site before any mechanical plant is used. This documentation is available at:

<https://www.hse.gov.uk/pubns/priced/hsg47.pdf>

Copies of guidance notes: Working near distribution and Guidance for working or over a Trunk Water Main are enclosed. Please read carefully as the conditions will apply to any work you undertake in the vicinity of Portsmouth Water assets.

It is important to ensure that a copy of the above guidance is provided to those undertaking any work which may affect our apparatus.

Please note, Portsmouth Water has no responsibility for any underground drainage or sewerage infrastructure. Enquiries regarding these assets should be directed to the relevant authority / company.

Officer comment: *Not relevant for an application for a Certificate of Lawfulness of existing development. As part of this application, regard cannot be given to any objections to this application on planning grounds, nor can planning conditions be imposed if a Certificate is granted.*

Scottish & Southern Electric (SSE)

We have sent you the plans of our network records with the area requested. You will shortly receive responses each of the following; any High Voltage Mains cables and Low Voltage Mains cables. Attached to this email is the "Guide to Interpreting" which includes the legends for the plans on pages 7-9.

If a Service Cable is not shown on our maps sent, and you require the Cable to be Traced, please contact the General Enquires Department on 0800 048 3516 (Option 3) or via email at ge@ssen.co.uk.

If you need further information on our network in this area or a quotation for any required works, please contact the Connections & Engineering Department on 0800 048 3516 or via email at connections@sse.com.

Officer comment: *Not relevant for an application for a Certificate of Lawfulness of existing development. As part of this application, regard cannot be given to any objections to this application on planning grounds, nor can planning conditions be imposed if a Certificate is granted.*

Southern Gas Network (SGN)

Please find an extract from our mains records for your proposed work area, any SGN assets are described in the map legend. On some occasions blank maps may be sent to you, this is due to your proposed work being in a no gas area but within our operational boundaries.

This mains record only shows the pipes owned by SGN in our role as a Licensed Gas Transporter (GT). Please note that privately owned gas pipes or pipes owned by other GTs may be present in this area and information regarding those pipes needs to be requested from the owners. If we know of any other pipes in the area we will note them on the plans as a shaded area and/or a series of x's.

The information shown on this plan is given without obligation or warranty and the accuracy cannot be guaranteed. Service pipes, valves, siphons, stub connections etc. are not shown but their presence should be anticipated. Your attention is drawn to the information and disclaimer on these plans. The information included on the plan is only valid for 28 days.

On the mains record you may see the low/medium/intermediate pressure gas main near your site. There should be no mechanical excavations taking place above or within 0.5m of a low/medium pressure system or above or within 3.0m of an

intermediate pressure system. You should, where required confirm the position using hand dug trial holes.

A colour copy of these plans and the gas safety advice booklet enclosed should be passed to the senior person on site in order to prevent damage to our plant and potential direct or consequential costs to your organisation.

Safe digging practices in accordance with HSE publication HSG47 “Avoiding Danger from Underground Services” must be used to verify and establish the actual position of the mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all relevant people (direct labour or contractors) working for you on or near gas pipes.

It must be stressed that both direct and consequential damage to gas plant can be dangerous for your employees and the general public and repairs to any such damage will incur a charge to you or the organisation carrying out work on your behalf. Your works should be carried out in such a manner that we are able to gain access to our apparatus throughout the duration of your operations.

Officer comment: *Not relevant for an application for a Certificate of Lawfulness of existing development. As part of this application, regard cannot be given to any objections to this application on planning grounds, nor can planning conditions be imposed if a Certificate is granted.*

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 0

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 0

Comment	Officer Comment
No comments received.	

7 Planning Considerations

7.1 The application is made under Section 191 of the Town and Country Planning Act 1990 (as amended) and relates to the existing lawful use of the Property. In this instance, it is claimed that the Property has been used as a **Sui Generis Hot Food Takeaway (HFT)** for more than 10 years before the date of submission of this application (09 June 2022).

7.2 As part of this application, regard cannot be given to any objections to this application

on planning grounds, nor can planning conditions be imposed if a Certificate is granted. However, in accordance with the advice in the National Planning Practice Guidance (NPPG), the Certificate should state the precise details of the use and any limitations on that use. The NPPG further advises that the Applicant is responsible for providing sufficient information to support the application and that the relevant test for determining the application is on the “**balance of probabilities**”. Finally, the NPPG states that:

"In the case of application for existing use, 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".

8 Submitted Evidence

8.1 The Application Form states that the Sui Generis Hot Food Takeaway (HFT) use began more than 10 years before the date of this application (09 June 2022) and, more specifically, alludes to the start of the current use around the year 2007.

8.2 The evidence submitted in support of the application is as follows:

- Statutory Declaration of Established Use [dated 16 September 2022].
- Official Land Registry Title Plan (*not public due to data protection*).
- Official Lease [dated 26 November 2007] (*not public due to data protection*).
- Compilation of various accountancy, BT business, bank, electricity, environmental service, insurance, gas, TV licence, and water service invoices and statements [From 2011 onwards] (*not public due to data protection*).

8.3 The statutory declaration of established use states that:

"For the entirety of my ownership of the Property, I have operated a business for the sale of hot food takeaway at the Property till now known as "The Light"

"Since 19 April 2010, I have been running the business of a sale of hot food consumption off the Property continuously without any challenge by the Local Authority or any other third party and without interruption".

"I confirm that during my involvement with the business there has never been any complaints or objections whether from the local planning authority or any other permission in respect of the use of the said Property as a business of a sale of hot food for consumption off the Property"

"In the above circumstances, I verily believed that such use was authorised by virtue of long user and therefore, the Property has an established use for the sale of hot food takeaway consumption off the Property".

9 Assessment of Evidence

9.1 The Property is currently occupied by "The Light" Chinese Hot Food Takeaway (HFT). The case officer's site visit on 02 August 2022 confirmed the above. It is noted that the "Google Street View" tool shows the existing external materials and signage to

have been on the Property since at least May 2011 which is in excess of 10 years.

9.2 The **Council's Environmental Health (EH) Team** has reviewed the submitted information and their own records. The EH Team has confirmed that there is an existing extraction system in place and that they have records showing that there has been a food case at the Property since 2002. It is a legal requirement to register a premises when there is any change in ownership for a food business. The Team's records show that the business changed ownership in 2009 to become "The Light", and this is supported by a Food Premises Regulation Form for the Property for 2008, 2009, and 2011. Moreover, the Team has confirmed that they have found no record of any complaints of noise, vibration, and/or odour in relation to the business, and that they believe the Property has been operating as a Hot Food Takeaway (HFT) in excess of 10 years.

9.3 The **Council's Business Rates (BR) Team** has confirmed that:

- The business ratepayer for the Property since 10 October 2016 has been "The Light Hampshire Ltd" which is in receipt of 100% Small Business Rates Relief; as such, no charge has been payable since 2016; and
- The Applicant was a director of the company from 28 June 2016 to 02 March 2021, but the company now has a sole director since 02 March 2021.

9.4 The **Council's Legal Team** has reviewed the validity and sufficiency of the evidence provided in support of the Certificate. The Team has advised that:

Section 191 (4) states: "If, on an application under this section, the local planning authority 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, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

To substantiate a claim for a CLEUD, the following information/evidence will be relevant:

- *Any information concerning council tax or electoral records.*
- *Invoices/bills or receipts from services such as water, electricity, gas, or phone.*
- *Statutory declarations from applicants, former owners, and neighbours.*
- *Photographs which can be dated.*
- *Factual historical information and evidence that confirms when the use or development commenced and its continuation through the relevant period.*

The requirement of the decision is also on the balance of probability as you have stated.

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce

counter-evidence.

Furthermore, “in the case of applications for existing use, 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.”

To conclude considering the factual information the applicant has provided, and your conviction as a planning officer that the above criteria are met; including the history and the planning status of the use or operation I agree with you that a CLEUD ought reasonably to be issued.

- 9.5 In light of the submitted information and the evidence / review from the Council’s Business Rates, Environment Health, and Legal Teams, the application appears to be acceptable in this instance. In addition, no contrary evidence has been submitted as a result of the neighbourhood notification / public consultation process. Therefore, on the balance of probabilities, it is considered that the Property has been used as a Sui Generis Hot Food Takeaway (HFT) for more than 10 years.

10 Conclusion

- 10.1 It is considered in this case, on the balance of probability, that the Property has been occupied as a Sui Generis Hot Food Takeaway (HFT) for more than 10 years. As such, a Lawful Development Certificate (LDC) **can** be issued.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/22/00614.

Information for Decision Notice (DN)

Havant Borough Council, as Local Planning Authority, certifies that on 09 June 2022, the use described in the First Schedule to this Certificate in respect of the land described in the Second Schedule was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:

The Local Planning Authority has considered evidence and information submitted by the Applicant and the planning history of the site. It appears to the Local Planning Authority on the balance of probability that the use described in the First and Second Schedules have taken place for a continuous period of at least 10 years up to the date of the current application.

FIRST SCHEDULE:

This certificate relates to the following development:

The existing use as a Sui Generis Hot Food Takeaway (HFT) as described in the

written particulars and other documents submit to support the application as follows:

Application Form (Dated 09 June 2022; Published 28 July 2022)

Site Location Plan (Published 28 July 2022)

Statutory Declaration of Established Use (dated 16 September 2022)

SECOND SCHEDULE:

This certificate relates to land at 61 London Road, Waterloooville, PO7 7EX, as shown edged red on the submitted Site Location Plan (Published 28 July 2022).

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.
- (5) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.