

Regeneration and Economic Development Department

APPLICATION NO: 21/00247/CLU

APPLICANT: TISA PROPERTY LIMITED

WARD AFFECTED: Shevington

DEVELOPMENT: CERTIFICATE OF LAWFULNESS FOR THE USE OF THE BUILDING AS A MIXED USE PUBLIC HOUSE AND HOT FOOD TAKEAWAY/DELIVERY BUSINESS (SUI GENERIS)

LOCATION OF SITE: Farmers Arms , Moorfield, Tower Hill, Kirkby, L33 1XD

KNOWSLEY LOCAL PLAN ALLOCATION –

Action Areas - Action Areas

Urban Greenspace and Educational Land - Urban Greenspace And Educational Land

Primary Residential Development - Primary Residential Development

RELEVANT POLICIES

NA

TECHNICAL CONSULTATIONS:

None Required

NEIGHBOUR NOTIFICATION:

The application is for a Certificate of Lawfulness and as such there is no requirement in wither planning law or the Statement of Community Involvement to publicise the application to neighbours.

Notwithstanding this, given the interest in the application which was recently refused for the change of use of the building to a shop and hot food takeaway ward councillors and members of the public who made representations were advise of the receipt of the application. Two representations were received responding to this notification which raised the following points:

- I moved into the area in October 2018. I can confirm that from that date until the pub closed that there was no food made on the premises. There was no food delivery service or any food at all offered within the pub. As far as I am aware the pub had only operated as a public house from when the housing development started.
- The worry I have regarding this application is that they are using it as a back door way to get a food take away and delivery service. As a resident if this was tagged onto an active public house that is being used and ran as a public house I would except the application. If they are doing this to only run this as a takeaway and not actually open as a public house I would be very concerned. This may surprise you but if the public house is open and operating as such they are held under far more scrutiny by the police and council than just a take away.
- If this legal document is excepted and it's given to be a multi-use venue of a take away and public house is there any checks or restrictions that a take away can only open if a public house opens as well?
- Am I also correct in thinking that this documents allows them to use the building for these uses but any extra car access or changes to the building footprint would still need a future planning application?
- Mundos Express has never traded in that location on either occasions before or after 2019.
- I have lived in Kirkby for 37 years and I am aware of one location on Knowsley Industrial Park where Mundos Express which there operates and has for some time.
- 34 Hall Lane is not in Towerhill it is actually a house on Old Hall Estate Kirkby which is located near Mc Donald's. I aware of this location as I lived on Old Hall estate during my childhood. The site in which the farmer arms pub is Mossborough Drive, Towerhill. It was solely a Farmers

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Arms pub and run by the brewery and did not operate as fast food in well over 60 years of operation.

- Due to the police involvement and records based around the closure of the existing Farmers Arms could we please access police reports, of all the drugs finds, drug operation and anti-social behaviour which existed which would make the proposal to make it valid for reopening and not a good development for the local residents. Due to it not operating as a Mundos Express this would not make it lawful. I would be able to get enough local residents to testify to this and provide you with the evidence required.
- If you visit the site it is an Environmental dangerous site with building fence walls broken, rat infested, broken glass, litter infested, damaged building we as residents are experiencing rats in our house the size of cats and often see them running to and from building.
- The site would be in best interest to being knocked down and the landed used as more valuable option potentially a good site for new home's development.
- The properties in which we live in was build 2 years ago and therefore the times of operation listed in the above operating hours would remain unsuitable, as it is too close to proximity of our homes.
- We would need resident parking applied to the roads as the site has no onsite parking and we have current issue with the local school parents blocking drives and parking bays. How would we go about requesting resident permits?

ISSUES AND ASSESSMENT:

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RELEVANT PLANNING HISTORY

13/00614/COU - CONTINUATION OF USE OF PART OF EXISTING PUBLIC HOUSE AS A HOT FOOD TAKEAWAY RESULTING IN A MIXED USE DEVELOPMENT OF PUBLIC HOUSE (USE CLASS A4) AND HOT FOOD TAKEAWAY & DELIVERY BUSINESS (USE CLASS A5). Granted - 26 February 2014.

20/00655/FUL - CHANGE OF USE OF PUBLIC HOUSE (USE CLASS SUI GENERIS) TO FORM PART CONVENIENCE STORE AND PART HOT FOOD TAKEAWAY (USE CLASS E / SUI GENERIS) TOGETHER WITH THE ERECTION OF A SINGLE STOREY REAR EXTENSION AND THE ERECTION OF A 2.1M HIGH WALL TO THE NORTH AND EAST BOUNDARY, INSTALLATION OF 2 NO. VEHICULAR ACCESS GATES AND THE CONSTRUCTION OF A NEW VEHICULAR ACCESS TO MOSSBOROUGH DRIVE. Refused - 4 February 2021.

PROPOSAL

The application is for the issuing of a Certificate of Lawful Use for The Farmers Arms building on Moorfield, Tower Hill, Kirkby for a mixed use of the premises comprising a drinking establishment (public house) and hot food takeaway. Under the current Use Classes Order and 2020 regulations a drinking establishment such as a public house or wine bar is 'sui generis' use (i.e. in a class of its own) and a hot food takeaway is also classed as a 'sui generis' use.

The application also seeks formal confirmation that the mixed use can operate subject to conditions 1 and 2 of planning permission 13/00614/COU which specified the plans and documents that the use must operate in accordance with and restricted the hours of use to 11:00 - 24:00 hours Monday to Thursday, 11:00 - 02:00 hours Friday to Saturday and 11:00 - 01:00 hours Sunday into Monday.

CONTEXT OF THE APPLICATION

Section 191 of the Town and Country Planning Act 1990 (as amended by section 10 of the Planning and Compensation Act 1991) makes provision for applications to be made to the LPA to establish the lawfulness of an existing development or use. This certificate has been submitted under Section 191 of The Town and Country Planning Act to determine whether the existing use of a currently vacant building can be lawfully used as a mixed use public house and hot food takeaway subject to the conditions imposed on planning permission 13/00614/COU.

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Application for a Certificate of Lawfulness are not assessed against the development plan or other material considerations such as the NPPF. Rather they are a formal confirmation from the LPA whether a development is lawful or not based on the evidence available to the LPA. S.191 (4) of the Town and Country Planning Act states that if the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use then they shall issue a certificate to that effect. Planning Practice Guidance also confirms that the applicant is responsible for providing sufficient information to support an application and, in the case of applications for existing use, if a LPA has no evidence itself, nor any from others, to contradict or make the applicants version of events less than probable there is no good reason to refuse the application, provided that the evidence alone is sufficiently precise and unambiguous to grant on the balance of probability.

The applicant has submitted the following evidence in support of their application:

- Location plan
- Decision Notice for 13/00614/COU
- Proposed site plan for 13/00614/COU (Dwg No 200 Rev -) and listed an approved drawing
- Decision Notice for 20/00655/FUL
- Location plan for 20/00655/FUL
- Planning Statement

APPRAISAL

The applicant submits that the building benefits from a lawful use as a mixed use public house, hot food takeaway & delivery business because in 2013 planning permission (ref 13/00614/COU) was granted for such a use, and the permission was implemented.

If such a permission was granted in 2013 and implemented, and no applications proposing an alternative change of use were ever granted and implemented then this would be the lawful use of the building. This is because Under S171B of the Town and Country Planning Act an unlawful use of the building can only become lawful if it has been operated continuously for a period of 10 years or more, and 10 years has no passed since the 2013 application was granted permission.

Officers have reviewed the planning history associated with the Farmers Arms and in February 2014 the LPA granted planning permission 13/00614/COU which proposed:

“CONTINUATION OF USE OF PART OF EXISTING PUBLIC HOUSE AS A HOT FOOD TAKEAWAY RESULTING IN A MIXED USE DEVELOPMENT OF PUBLIC HOUSE (USE CLASS A4) AND HOT FOOD TAKEAWAY & DELIVERY BUSINESS (USE CLASS A5).”

The proposal clearly states that the change of use is a continuation of an existing use and therefore it is reasonable to assume that the application was seeking to regularise a breach of planning control, this would mean that the use had been implemented. A review of the planning file also establishes that the application was submitted following an enforcement complaint that the building had been operating as a mixed use public house hot food takeaway and this is therefore considered to be the lawful use of the building. The use was granted subject to planning conditions requiring that it be used in accordance with the approved documents and subject to restricted hours of use.

For the avoidance of doubt, the permission is for a mixed use rather than a separate public house and hot food takeaway and delivery business and therefore either use could not operate by itself without permission being granted for such a change of use. Indeed the supporting statement describes how the 'hot food takeaway and delivery business' sold food to customers of the pub for consumption on the premises as well as took phone orders for either delivery or collection, almost along the lines of a pub with a 'Deliveroo' or 'Uber Eats' contract. This is backed up by a site photo taken at the time of the planning application the entrance into 'Mundos Express' was not welcoming to members of the general public and confirmation from Business Rates that only one set of rates were paid for the business operating from the site. The link between the uses is also shown on the approved floor plans which define where the constituent parts of the mixed use are located.

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It is worth noting that the description of the planning permission identifies that the mixed use comprised an element of Use Class A4 and an element of Use Class A5. However, since the revisions to the Use Classes Order in 2020 both uses fall under a Sui Generis use and the lawful use of the building is more properly described as:

“A mixed use public house and hot food takeaway/delivery business (Sui Generis)” as clearly set out above this use must be operated in accordance with conditions 1 and 2 of planning permission 13/00614/COU.

Local residents have stated that a hot food takeaway and delivery business has never operated from the site and one resident has supplied photos of the building and noted that there were no notices/signs up stating that hot food takeaway and delivery was available from the site. However, as set out above, the LPA believes that sufficient evidence does exist to demonstrate that the building was used as a mixed use public house and hot food takeaway/delivery business.

The other matters raised by residents are not relevant to the determination of this application.

CONCLUSION

In conclusion, having regard to the evidence available to the Council as local planning authority on the balance of probability the lawful use of the building is a mixed use public house and hot food takeaway/delivery business (Sui Generis). The use must be operated in accordance with the conditions set out in planning permission 13/00614/COU.

RECOMMENDATION:

Grant a Certificate of Lawfulness for the use of the building as a mixed use public house and hot food takeaway/delivery business (Sui Generis) which must operate subject to the conditions set out in planning permission 13/00614/COU

Lee Osborne

16 June 2021

Alan Kilroe
17 June 2021

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