

12 June 2024

Knowsley Metropolitan Borough Council
Municipal Buildings
Huyton
L36 9UX

via email

Dear Sir/Madam,

Certificate of Lawfulness (Section 191 of the Town and Country Planning Act (1990))
RE: Chapel Brook, Wilson Road, Tarbock Green, Liverpool, L36 6AD
Planning Portal Ref: PP-12863504

We have been instructed by Whitbread PLC to submit to you the enclosed application for a Certificate of Lawful Use under Section 191 of the Town and Country Planning Act 1990 for:

“Use of the premises as a restaurant falling within Use Class E ‘Commercial, Business and Service’ of the Use Classes Order”.

The application has been submitted electronically via the Planning Portal and along with the application form, comprises the following:

- Covering Letter
- Copies of dated Brewers Fayre Menus
- Copies of dated Floor Plans
- Statutory Declaration signed by Managing Director of UK Hotels and Restaurants at Whitbread Plc

Introduction

This application is submitted to obtain a formal legal Certificate from the Council in relation to the use of land and buildings comprising Chapel Brook (identified with a red line on the enclosed site location plan) as a restaurant within Use Class E (formerly Use Class A3). The Certificate seeks to confirm its use as a restaurant.

The application provides evidence that for in excess of 10 years the primary purpose and function of the premises has been as a restaurant for the sale of food and drink for consumption on the premises. Whilst it is not disputed that the Chapel Brook serves alcoholic drinks, the sale and consumption of alcoholic drinks at the premises is ancillary to the main use of the premises. As such, the Chapel Brook



is by definition a restaurant within Use Class E of the Town and County Planning (Use Classes) Order 1987.

The Site

The site comprises the establishment known as the Chapel Brook (the Site). The premises is located off the A5080 and is accessed via Wilson Road. There is a Premier Inn unit to the east of the site and is located close to the M57.

The subject site extends to an area of circa 0.2 hectares and comprises a part two storey and part single storey building, together with car parking and a small outdoor seating area.

Legislation and Case Law

This application is made in accordance with Section 191(1) of the Town and Country Planning Act 1990, which states that if any person wishes to ascertain that an existing use of buildings and land is lawful, they may make an application for this purpose to the local planning authority specifying the land and describing the use.

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, they are required to issue a Certificate to that effect.

Case law has established that the onus and burden of proof is on the applicant to prove, on the balance of probabilities, that the Certificate of Lawfulness should be granted. Clear guidance on these matters is also contained within the NPPG, which states that *“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”*.

Use Classes Order

It is evident from the site’s planning history that it trades under Class E, Class E being introduced in The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

It bears consideration to consider the definition of Class E(b), 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. This has a basis in the former, Class A3 ‘Food and Drink’ of the Town and Country Planning (Use Classes Order) 1987.

For reasons that will be latterly explained, when the amended Use Classes Order came into effect in 2020, the on-site restaurant moved from being within Use Class A3 to the new use Class E(b). Whilst the premises serve alcoholic drinks and has a ‘bar’, the vast majority of drinks are purchased and



consumed as part of a meal and the ‘bar’ element is very much ancillary to the main and primary use of the premises as a restaurant. The primary use of the site is 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 – a Class E use within the current Use Classes Order.

The enclosed Statutory Declaration, signed by Simon Ewins, Managing Director for UK Hotels & Restaurants of Whitbread Plc on 6 June 2024, clearly evidences the position that this site has traded as a Restaurant consistently for in excess of 10 years. During this time, food sales have made up on average 68.87% of sales from the site. It should be noted that the 31.13% beverage sales includes drinks bought in conjunction with a meal, which is the predominant form of drinks purchases at this site and across the Whitbread network. As such, the figure at the site for solus drinks purchases – as would normally be seen at a Public House or Bar – is much lower than the figure noted above.

Planning History

Through utilising the Council’s online planning webpages, we have been able to identify planning history which is relevant to the application.

Planning permission ref. 74/15021/HIST was approved on the 8th July 1993. The description of development refers to the ‘*Erection of 40 no. bedroom Travel inn and Brewers Fayre Restaurant and Construction of New Access*’ on the site. This is the operative planning permission for the erection of the restaurant and is clear evidence that the site has been used as a restaurant throughout its trading period.

Existing Lawful use of the Site

This application seeks a Certificate of Lawful Existing Use for the use of the premises as a restaurant within Use Class E ‘*Commercial, Business and Service*’.

The submitted Statutory Declaration very clearly supports the site subject of this application to have remained in Restaurant use (only), for a period of in excess of 10 years. During this period, food sales have predominated at the site (68.87%), even when drinks bought in conjunction with a meal are excluded from the above figure.

Additional evidence to support the applicant’s case is set out below under the following headings:

- Food offer, operation and brand history;
- The layout of the premises; and
- Trading data.

Food Offer, Operation and Brand History

For a period in excess of 10 years, the restaurant has retained an extensive food menu with a wide selection of starters, mains, and desserts and a children’s menu. Included within our submission of evidence is sample menus relating to the site over recent years.



Evidently, the scale and choice offered from the menu has remained that which is reflective of a restaurant, as opposed to that which might be seen within a Public House, where a much more constrained choice of food options would generally be offered. Food is continually available on site from 1130 until 2100.

As per the operational requirements of the operator, the premises has traded up to standard as a Brewers Fayre and as such has utilised the standardised menus applicable, as provided by the operator. Submitted with our evidence is a series of dated menus used by the site since at least 2012.

Within these menus, there is consistency in the provision of a commercial offer aimed at encouraging trade from 1200 to 1800, labelled in the 2012 menu as the “Daytime Value Menu” and “Lighter Bites” option. Alongside this, the 2024 food menu highlights the range of meals and sides available at The Chapel Brook, ranging through from sharers to desserts. This showcases the branding of the Brewers Fayre Restaurant brand as a family establishment. These menus consistently show the extent of the food provided at The Chapel Brook and the consistency in such provision.

As is confirmed within the submitted Statutory Declaration, reservations are taken for tables in advance, by in-person booking, phone or email. Customers without reservations ('walk-ins') can be seated if there is available space.

Customers are welcomed at the front door desk by a server who greets them, checks their reservation, or, if a walk-in, advises them of availability for a table. A server then takes them to their allocated table and menus are provided. Food and drink orders are taken by servers from the customers whilst they are seated at their table. Plated food and drinks are then brought to them. A bill is presented at the end of the meal for payment, which includes an optional service charge.

On a daily basis the restaurant is staffed by 23 servers, 9 kitchen staff (comprising [chef, assistant chef etc]) and 3 managers with responsibility for front of house, back of house/kitchen and the wider restaurant respectively. These numbers are the average figures for the past ten years and highlight the scale of operation at the Chapel Brook in a restaurant capacity. There is evidently a clear use of the site as a restaurant having regard to the sheer number of staff employed and the provision of management for the various areas.

The above operation and staffing are clearly reflective of a restaurant use.

Through the use of Google Street View Imagery we are able to confirm the use of the site as the current branding for a period in excess of 10 years. These are visible in **Exhibit I**.

Layout

The layout of the premises has remained fundamentally unchanged since the commencement of the use of the site as a restaurant and has remained so for a period in excess of 10 years.



The photographs at **Exhibit 1** and floor plans at **Exhibit 2** also clearly note the uninterrupted restaurant use of the site.

The Ground Floor Existing and Proposed Layout ref. 1877/01 B dated February 2014 shows the historic layout of the premises. As indicated on these plans, the identified restaurant area expands over the majority of the and comprises the majority of the floorspace over the ground floor and the entirety of the first floor.

Proposed Licensing Layout 1947/07A dated May 2015 shows the premises continuing to be laid out and used in the same way and the premises comprising entirely of a restaurant with tables and chairs for dining. Little change is identifiable between these two plans, showing consistency over this period.

All the plans show the premises laid out as a restaurant with tables and chairs and clearly illustrate the primary activity in the premises has been dining and the consumption of food. Additionally, the plans show that the premises have always had a large kitchen with associated restaurant scale refrigeration and freezers. Such a large and extensive kitchen would not be found in premises whose primary function is the sale and consumption of alcoholic drinks or where there is a limited food offer and is further confirmation that the premises are a restaurant.

Trading Data

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Food	67.86%	67.71%	67.67%	67.34%	68.46%	68.85%	68.64%	68.87%	73.26%	70.03%	68.27%	69.52%
Drink	32.14%	32.29%	32.33%	32.66%	31.54%	31.15%	31.36%	31.13%	26.74%	29.97%	31.73%	30.48%

Table 1: Trading Data of the Chapel Brook Restaurant 2013-2024

The site's trading data since 2013 confirms that on average 68.87% of purchases made from the restaurant were for food. The remaining 31.13% comprised the sale of beverages. As we have already noted, this 31.13% figure is somewhat misleading, as it includes drinks purchases bought in conjunction with the purchase of a meal – purchases that would be expected in any restaurant.

Unfortunately, the manner in which my client records purchases does not allow drink purchases to be split between those made in conjunction with meals, or those bought as a solus purchase. As the Statutory Declaration outlines, drinks bought in conjunction with meals are the predominant form of



beverage purchase across the Whitbread estate and also at this site. As a result, solus beverage purchases are significantly lower than the 31.13% figure noted above.

The data clearly shows that the dominant use of the premises has been and continues to be the sale of food, providing clear evidence that in planning terms the premises is a restaurant where the sale of alcoholic drinks is ancillary. It is clearly not a drinking establishment where the sale of food is ancillary nor it a mixed use given the sale of food comprises around 70% of total sales.

Ancillary Accommodation

As part of the operation of the Site as a restaurant, the unit features manager's accommodation in the form of two flats, which are solely let to the relevant manager(s) on-site, where operationally required. These units cannot be let to a resident other than an employee of the Landlord, being Whitbread PLC, as confirmed by the submitted AST accompanying our submission. As such, the accommodation cannot be in use other than in conjunction with the operation of the Restaurant and is not offered as a separate unit to the rental market. It is subsequently considered to be wholly ancillary in its use, to the Class E (b) Restaurant known as the Chapel Brook.

Conclusion

This application is submitted to formally confirm the established use of the premises known as the Chapel Brook as a restaurant within Class E. The application clearly and robustly demonstrates that the premises have traded as a restaurant since at least 2013 with the sale of alcoholic drinks ancillary to the main use of the premises throughout this time.

Accordingly, we respectfully request that Certificate of Lawful Existing Use for the use of the premises as a restaurant within Class E of the Town and County (Use Classes) Order 1987 (as amended) is granted without delay.

If there are any queries or you require any additional information, please do not hesitate to contact me.

Yours faithfully,

Jonathan Vose BA (Hons) DipTP MRTPI
Director
Walsingham Planning



Exhibit I: Photos of Site

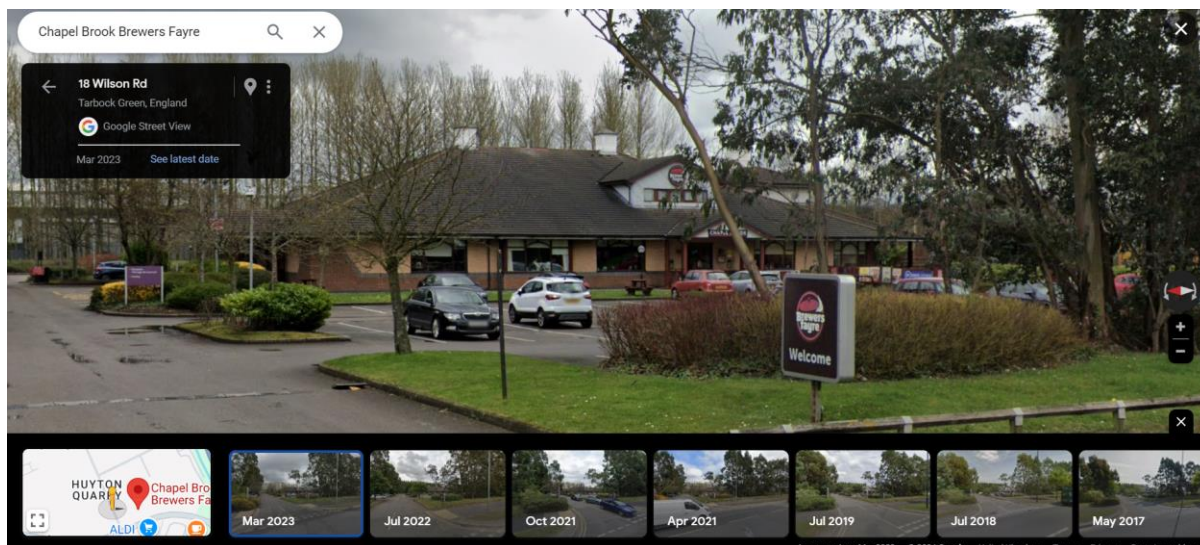


Figure 1: Photo of Site Dated March 2023 (C) Google Street View 2024

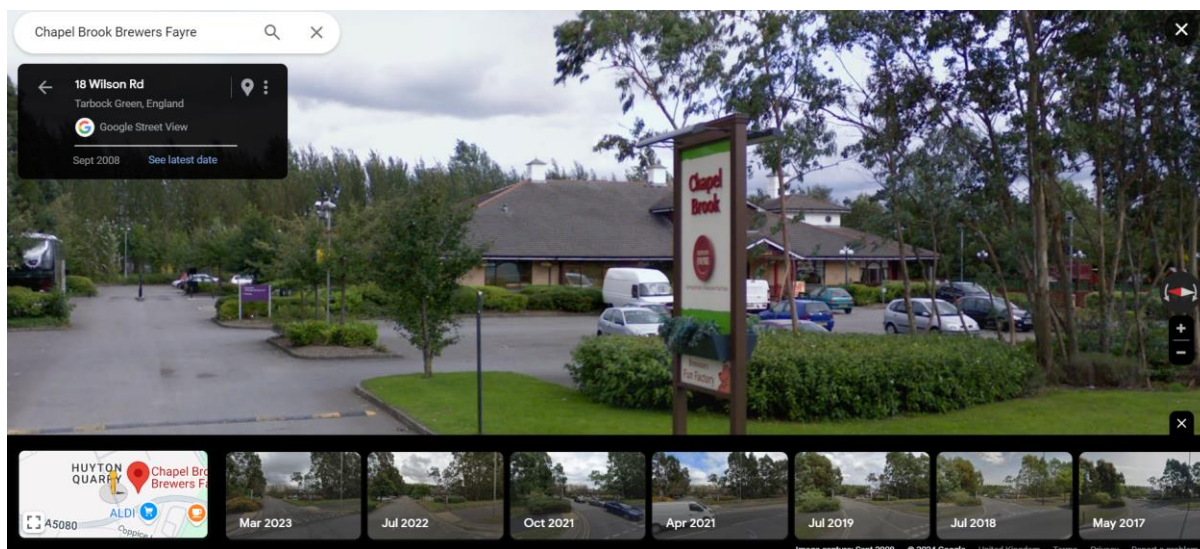
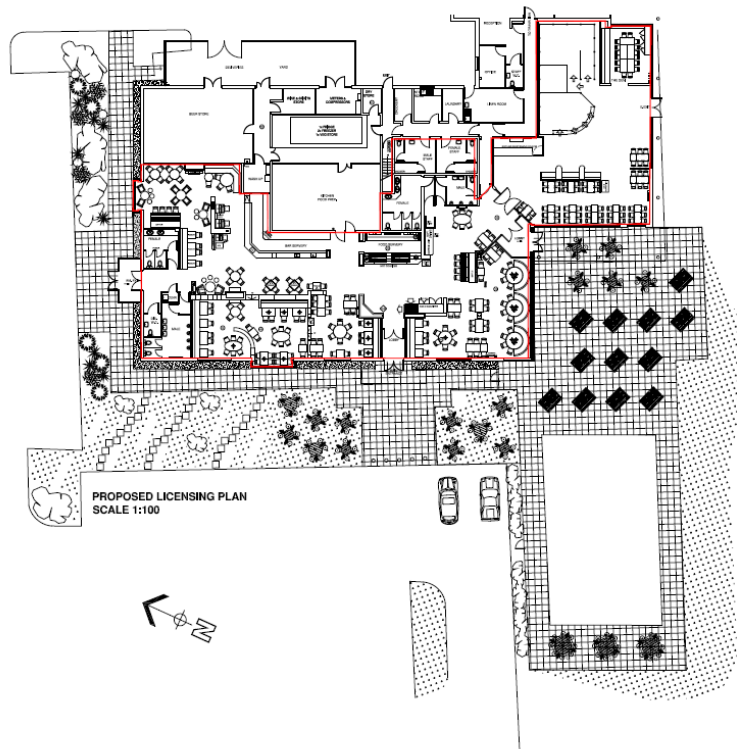


Figure 2: Photo of Site Dated September 2008 (C) Google Street View 2024



Exhibit 2: Copies of Dated Floor Plans



DRAWING NO. 1947/07A		DATE 15/05/15
PROJECT NAME CHATEL BROOK LINDSAY		
PROJECT TYPE PUB FACTORY		
DRAWING TITLE PROPOSED LICENSING LAYOUT		
DESIGNER	DATE	1947/07A
18 St. Andrews Road, Bourne End, Bucks SL8 5AR Tel: 01494 444444 Email: info@stight.co.uk Website: www.stight.co.uk		

Figure 3: Drawing Ref 1947/07A Proposed Licensing Layout Dated May 2015

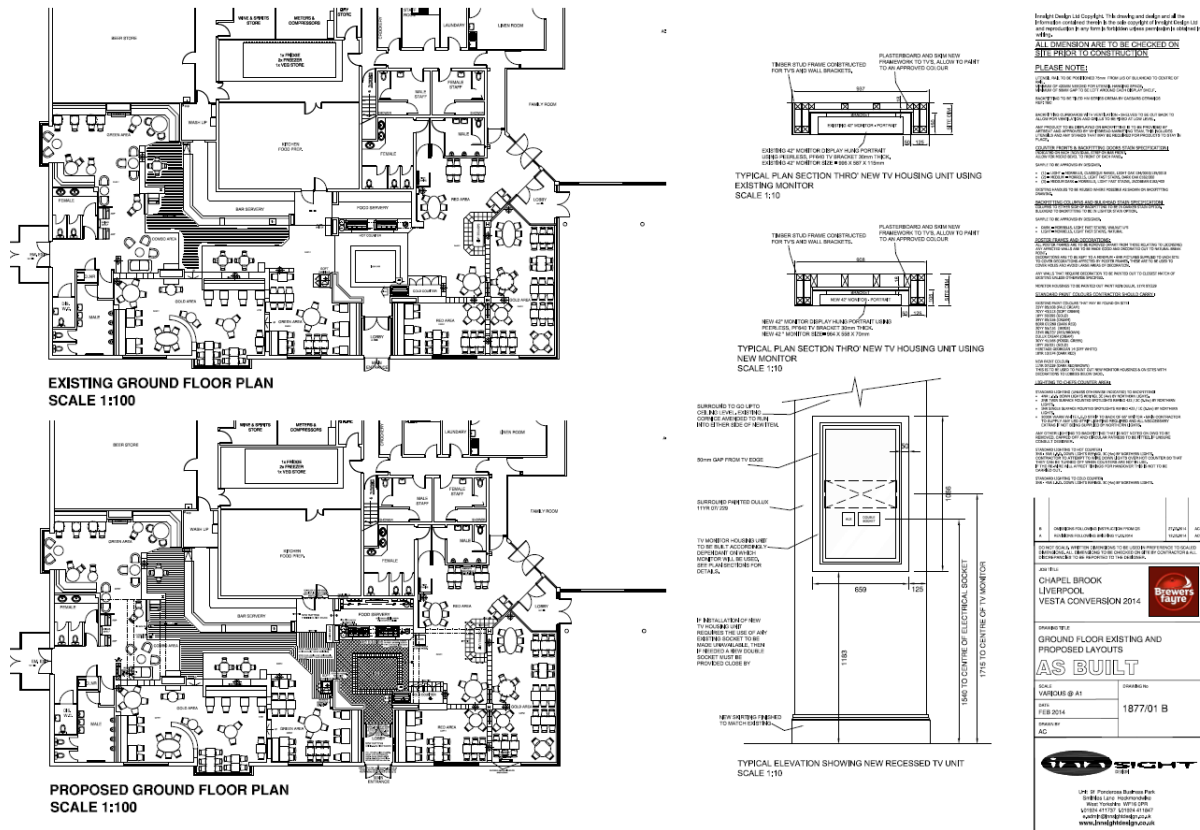


Figure 4: Drawing Ref. 1877/01B Ground Floor Existing and Proposed Layouts Dated Feb 2014