

Regeneration and Economic Development Department

APPLICATION NO: 21/00604/CLD

APPLICANT: Mr Sivaraj

WARD AFFECTED: Whitefield

DEVELOPMENT: CERTIFICATE OF LAWFUL DEVELOPMENT FOR PROPOSED USE OF THE FORMER BOOZE BUSTER RETAIL PREMISES AND OFF LICENCE FOR A USE FALLING UNDER USE CLASS E (COMMERCIAL, BUSINESS AND SERVICE)

LOCATION OF SITE: Booze Buster , 10 Glovers Brow, Kirkby Park, Kirkby, L32 2AE

KNOWSLEY LOCAL PLAN ALLOCATION –

Primary Residential Development - Primary Residential Development
Water Restricted Surface Area - North Area - Kirkby

TECHNICAL CONSULTATIONS:

None Required

NEIGHBOUR NOTIFICATION:

This application has been publicised by letters sent to 0 neighbours. No representations have been received.

ISSUES AND ASSESSMENT:

SITE AND SURROUNDINGS

The application relates to a unit on Glovers Brow, Kirkby. The unit the subject of the application forms one unit within a local shopping precinct. The building is single storey attached to other 2 storey commercial premises.

The building is currently vacant.

PROPOSAL

The application has been submitted under S192 of the Town and Country Planning Act 1990 (the 1990 Act). The application seeks determination on whether a former A1 (shop) use can lawfully be used by the new owner for any use that falls within Use Class E (Commercial, Business and Service). In addition, the application seeks confirmation that planning permission is not required to use the premises for any use falling within Use Class E.

The applicant's statement advised that for the purposes of the consideration of the application, the proposed use of the premises is for the sale of convenience goods, including the sale of alcohol via off sales.

RELEVANT PLANNING HISTORY

K/APP/00877

Co-Op Store Glovers Brow Kirkby :- Two Poster Advertising Panels
Granted - August 1975

K/APP/10775

Former Co-Op Off Licence, Glovers Brow, Kirkby:- Alterations to Shop Front
Granted - April 1988

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NEIGHBOUR NOTIFICATION

There is no statutory requirement to consult third parties including parish councils or neighbours.

LEGAL CONTEXT

The key statutory framework for lawful development certificates and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 (as amended).

The application is made under s192 of the Town and Country Planning Act 1990 (as amended). An application under s192 seeks to establish whether

- a) Any proposed use of buildings or land; or
- b) Any operations to be carried out in, on, over or under land,

would be lawful.

S192 (2) sets out that if on 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.

It is therefore not an application for planning permission. Instead, it is a legal determination based upon evidence and facts presented by the applicant as to whether the stated activity would be lawful. In such cases, the local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Issues such as the planning policies do not fall to be taken into consideration as the decision is based on fact and not on policy grounds and therefore planning merits are not relevant at any stage in this particular application process.

Class E was introduced in September 2020 (The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020) and brackets together a wide range of uses, all now considered to be in the same Use Class.

Schedule 2, Part A of the Use Classes Order states:

Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes—

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,
- (b) 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,
- (c) for the provision of the following kinds of services principally to visiting members of the public—
 - (i) financial services,
 - (ii) professional services (other than health or medical services), or
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,
- (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,
- (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,

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(f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,

(g) for—

- (i) an office to carry out any operational or administrative functions,
- (ii) the research and development of products or processes, or
- (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

OFFICER APPRAISAL

The applicant contends in the submission that the previous use of the premises, before becoming vacant in 2020, was a retail premises with off licence falling within the Use Class A1 but which now falls under Class E (a)(Commercial, Business and Service) as introduced 1 September 2020.

The application is supported by a statement which indicates that the submission seeks confirmation from the LPA that the A1 retail/off licence premises, formerly known as Booze Buster, can be lawfully used by the new owner for any use that falls under Use Class E and that planning permission is not required to use the premises for any use falling within Use Class E.

The applicant has indicated that the proposed use of the premises would be for the sale of convenient goods, including the sale of alcohol via off sales. Nevertheless, the application as submitted seeks to establish whether any use within Use Class E would be lawful.

The applicant has provided 'photographs' appended to the statement which comprise screenshots of Google Street View. These images show the premises in 2008, 2009, 2015 - 2019 which show the unit operating as Booze Buster and an image dated March 2021 in what appears to show the unit vacant given that roller shutters are down, signage relating to Booze Buster removed and a 'For Let' sign displayed.

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

Under s171b of the Town and Country Planning Act an unlawful use of a building can only become lawful if it has operated continuously for a period of 10 years or more. The planning history for the unit indicates that the unit was used as an off licence from at least 1988 and there are no records to indicate that any other use, other than retail, has since occupied the premises up until it became vacant.

In assessing this application consideration also needs to be given to whether the premises would fall within Class F. 2 (Local Community Use) of the Use Classes Order.

Class F.2 Local community Use as—

(a) a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where—

- (i) the shop's premises cover an area not more than 280 metres square metres, and
- (ii) there is no other such facility within 1000 metre radius of the shop's location,

(b) a hall or meeting place for the principal use of the local community,

(c) an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms,

(d) an indoor or outdoor swimming pool or skating rink.

This comprises a category dedicated to protecting local community uses.

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In respect of a) i) above, at a floor area of approximately 11 sq m, the premises do not exceed the threshold of 280 sq metres and as such consideration to part a) ii) needs to be given and in that regard, the premises are located within a local shopping precinct immediately adjacent to a Tesco Express, which is a unit which sells essential goods, including food, to visiting members of the public and the unit is located within a 1000 metre radius of Kirkby Town Centre.

For the reasons outlined above and for the purposes of this assessment, the site does not fall within Use Class F.2 - Local community Use.

The Council's Business Rates team have confirmed that the premises were occupied by Cellar 5 (off-licence) from April 1990 until 2003. The premises were operating by 'Wine Cellar' from 2003 until vacated in February 2020.

Taking into consideration the planning history, occupation records and having regard to the timeline indicated on Google Street View, the premises appear to have been operating as a retail use consistently, in excess of 10 years. It is considered that in the absence of any contradictory evidence, on the balance of probability the lawful use of the premises was Use Class A1 which since September 2020 would now be encompassed by Use Class E (a) (display or retail of goods, other than for the sale of hot food principally to visiting members of the public).

As from 1 September 2020, given that the building is considered to be being used for a use falling within Class A1 (shops), then it must be treated as though it is being used for a purpose specified in Class E. Change of use to another use within Class E would be allowed without the need for planning permission.

The effect of granting a certificate is not to grant planning permission, in this instance, a certificate would confirm that the use of the premises for any use within Use Class E would not amount to development. The main consideration when determining this application for a Lawful Development Certificate for a Proposed Use is whether or not the resultant use would be considered as a material change.

CONCLUSION

As from 1 September 2020, under the terms of The Town and Country Planning (Use Classes) Order 1987 (as amended) any use previously within an A1 (Shops) use have been reclassified as falling within Use Class E (Commercial, Business, Services).

Given the above factors, it is concluded that the proposed use of the premises for the sale of convenience goods and the off-sales of alcohol would not be materially different from that of the know retail use of the premises and that a material change of use would not take place. Hence, it is not considered to be development, as defined in Section 55 of the Town and Country Planning Act 1990. The lawful use of the premises is Use Class E and there are no known planning records that indicate that the premises are restricted by planning conditions restricting the use of the premises. Change of use to another use within Class E would be allowed without the need for planning permission.

RECOMMENDATION:

Approve the requested Certificate of Lawfulness under Section 192 of the Town and Country Planning Act 1990.

The established use has been subsumed within Class E of Schedule 2, Part A of the Town and Country Planning (Use Classes) Order 1987 (as amended) and therefore the use of the premises for any use within Class E would be a lawful use of the premises.

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SCHEDULE 1

Date Received	Ref. No	Version	Drawing/Document Title
23/07/2021	Dwg. 1	-	Site Location Plan
23/07/2021	Dwg. 2	-	Existing and Proposed Floor Plans
23/07/2021	-	-	Supporting Planning Statement

Maxine Wishart

5 November 2021

Signed by

Mark Quinn

11 November 2021

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