

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: R/238/19/CLE

LOCATION: Cafe Oasis
10 Churchill Court
Rustington
BN16 3DA

PROPOSAL: Application for Certificate of Lawfulness for an Existing Use - Use of an external dining area (Class A3) associated with the approved cafe (Class A3)

DESCRIPTION OF APPLICATION

The application as submitted seeks a lawfulness certificate for an outside seating area which is used when weather permits. No tables/chairs are stored outside overnight. As such the application relates to the use of the land.

For a certificate to be granted it would need to be shown that the land had been used in the manner described for the last ten years dating back from when the application was made.

The application includes:

- Site Location Plan (ref: DWD001);
- Application Form;
- Statutory Declaration by Store Property Investments Ltd dated 30th September 2019;
- Statutory Declaration by Sara Clifton dated 2nd October 2019;
- License Agreement dated 2006;
- License Agreement dated 22nd October 2014; and,
- Schedule of images.

The Site is currently used as an external dining area in association with the adjacent Cafe Oasis, which is in A3 (Restaurant) Use Class, and the full extent of the site has been used for this purpose since August 2004.

Summary of submitted Evidence

A Statutory Declaration from Sarah Wickens of Store Properties Investments Ltd, owner of No.10 Churchill Court for over 40 years since its original construction, who states that the area currently used as an external dining area was set out in August 2004, and has been in continuous use to date.

Statutory Declaration (Sara Clifton), leaseholder of Cafe Oasis, which has operated from No.10 Churchill Court since 2006, states that the area currently used as an external dining area has been in continuous use from the date of her leasehold.

Tables and Chairs Licence Dated 2006

The 'Tables and Chairs' licence granted by the applicant to the leaseholder of the property, grants a license to locate and use tables and chairs in the area detailed on the plan included in the license (ref: 3872/15 Rev A) and to use the area as a seating area ancillary to the use of No.10 Churchill Court.

Schedule of Images

Appendix 6 contains a schedule of images taken from Google Earth and Google Streetview that demonstrate that the site has been used as an external dining for over 10 years, since 2007. It is not possible to determine from the aerial photographic evidence the number of table and chairs. However, it the use of the land for outside seating and not the number of chairs and tables on the land that is relevant.

SITE AND SURROUNDINGS

Churchill Court lies within the designated boundary of Rustington Town Centre and forms a Secondary Retail Frontage. It is located to the east of Churchill Parade car park, and north of The Street.

The site is a cafe with pavement along the southern and western elevations which is enclosed from the highway by bollards. The area to the south which is the subject of this Certificate is 4m wide at its deepest point and the area to the strip to the west is 1m wide.

There are commercial uses above.

There is a projecting canopy approx. 1m wide over part of the area which appears, from aerial photographs, to have been in existence for a number of years.

At the time of the case officers site visit no outside seating was placed on the area.

RELEVANT SITE HISTORY

R/213/99/	Change of use to Class A3	ApproveConditionally 04-01-00
R/36/99/	Alterations to shopfront and office entrance.	ApproveConditionally 19-03-99

Consent to change the use of No.10 Churchill Court to Class A3 was granted on 4th January 2000 (ref: R/213/99).

No further planning applications have been submitted since the grant of consent to change the use of the premises to Use Class A3.

REPRESENTATIONS

Representations Received:

Rustington Parish Council
No Objection

Comments on Representations Received:

None

CONSULTATIONS

WSCC Strategic Planning

Consultations Responses Received:

County Highways - No Objection.

As proposed the placement of the tables and chairs does not reduce the available footpath width to such a degree where vulnerable footway users would be required to enter the carriageway to pass and repass.

WSCC local mapping appears to indicate that the cafe has been using the private walkway in this location for a substantial period of time to date with no incidents. There is no evidence to suggest that the existing practice at this site has been operating unsafely.

Comments on Consultation Responses:

This application for a certificate of lawfulness is not an application for planning permission where the planning merits of the use are taken into account. In this case the issue of a certificate depends entirely on factual evidence about the history and planning status of the building, or other land, and the interpretation of any relevant law or judicial authority.

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states:-

If, on an 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; and in any other case they shall refuse the application.

CONCLUSION

It is considered that the supporting evidence provided with this Statement demonstrates that, on a balance of probabilities, the use of the site as an external dining area began more than 10 years before the date of this application. There is considered to be sufficient evidence to warrant a certificate of lawful use being granted.

RECOMMENDATION**APPROVE**

The use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that at the date specified above, the land had been used as an external dining area in association with the approved cafe use for a continuous period of 10 years.

FIRST SCHEDULE

Lawful Development Certificate for the existing use for outside seating area.

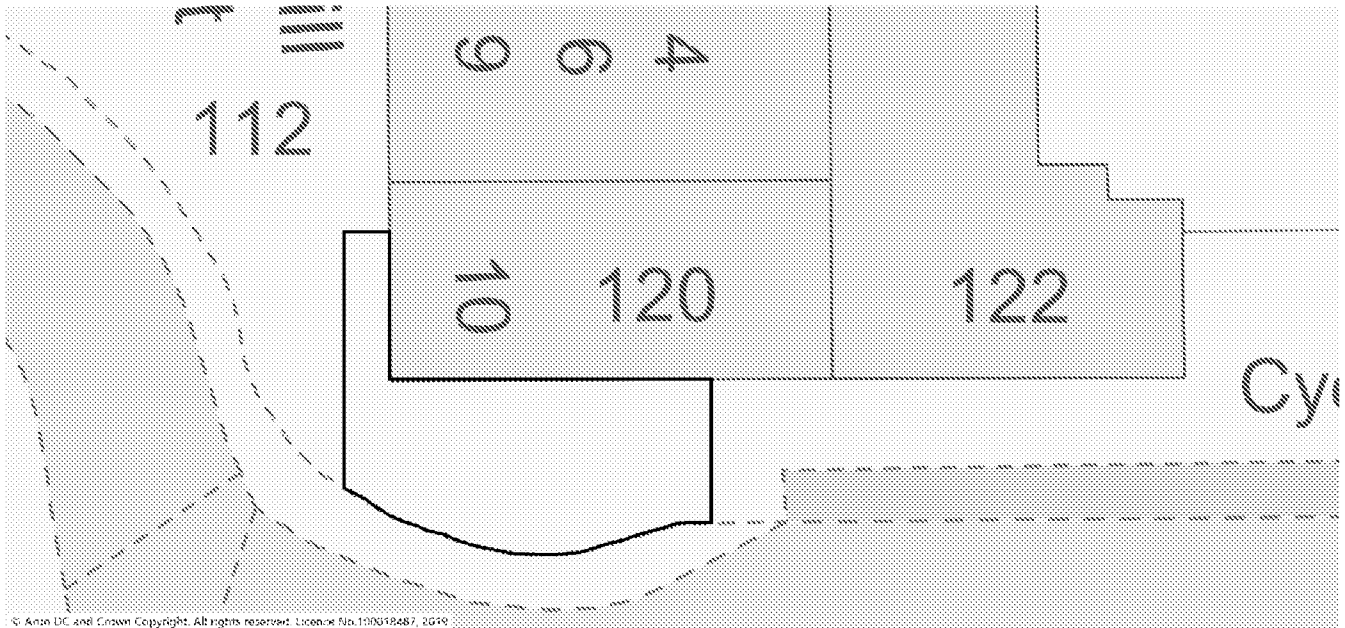
SECOND SCHEDULE

Cafe Oasis, 10 Churchill Court, Rustington, BN16 3DA

EXTENT OF USE

Use of outside area for customer seating in association with the cafe opening hours.

R/238/19/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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