

Delegated Report		Analysis sheet	Expiry Date:	06/12/2024
		N/A	Consultation Expiry Date:	N/A
Officer				
Connie Marinetto			2024/4401/P	
Application Address				
60 Theobald's Road London WC1X 8SF			See draft decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Existing use of the property as restaurant and takeaway (Sui Generis).				
Recommendation(s)		Refuse Certificate of Lawfulness		
Application Type:		Certificate of Lawfulness (Existing)		
Informatives:		Refer to Draft Decision Notice		
Consultations				
Summary of consultation responses:		No statutory consultation was undertaken as it is not required under the Town and Country Planning Act. No comments were received.		

Site Description

The application site relates to the unit occupying the ground floor and basement of 60 Theobald's Road. The site currently operates as a 'Chicken Valley'.

Relevant History

Application Site:

2011/6027/P – Installation of replacement shopfront including new entrance doors, stallrisers and awning in connection with existing restaurant use (Class A3). **Granted 10/02/2012.**

2011/2708/A – Display of fascia sign and awning with logo to existing restaurant unit (Class A3). **Granted 20/07/2011.**

2011/2681/P – Installation of new shop front to existing restaurant unit (Class A3). **Refused 20/07/2011.**

2009/2809/P – Installation of new shop front and projecting awning to existing restaurant unit (Class A3). **Refused 17/11/2009.**

2003/2581/P – The retention of the change of use of the basement and ground floor from retail (use class A1) to restaurant (use class A3), together with the installation of an extract flue attached to a flank wall to the rear to discharge above roof eaves level. **Granted 02/02/2004.**

Assessment

- 1.1. Under the Town and Country Planning Act 1990 a land use becomes lawful if it can be demonstrated that the use has existed continuously for at least ten years prior to the date of an application. National Planning Policy Guidance (NPPG) advises that if an applicant can present clear and unambiguous evidence, and in the absence of any contradictory evidence, the LPA should issue a certificate of lawfulness on the relevant test of the evidence based on 'the balance of probability' test.
- 1.2. The applicant has not submitted irrevocable evidence to demonstrate that the premises have operated continuously as a mixed-use restaurant and takeaway (Sui Generis) for at least ten years. The statutory declarations provided are anecdotal, vague and lack detailed evidence of how both restaurant and takeaway uses coexisted independently of each other rather than on an ancillary basis. While it is accepted that a restaurant (Class E) can have an ancillary takeaway (Sui Generis) element and vice versa, a mixed use typically requires the uses to be roughly equal in floorspace and turnover.
- 1.3. Evidence indicates that the premises previously operated primarily as a restaurant/cafe (Class E) with ancillary takeaway services. Drawings submitted by the applicant from 2003 show a storage room at basement level, but more recent drawings on Council records show seating on the ground and basement floors. This is further corroborated by online Trip Advisor reviews of 'Caffe Capital' (the previous operator) which describe seating across both levels. Additionally, all of the previous planning applications at the site, as listed above, have the existing use as restaurant (A3) on the application forms. The applicant has not demonstrated that the takeaway element was significant enough to constitute part of a mixed use.
- 1.4. The evidence also fails to distinguish between hot food takeaway, which would contribute to Sui Generis use, and cold food takeaway, such as sandwiches and coffee, which would fall under Class E. Further information is needed on the type of food sold and the split between takeaway food and food consumed on site and records of sales or turnover associated with the two uses. Information on the layout of the unit and number of tables and chairs have not been provided. Based on available evidence, it appears likely that takeaway services were ancillary to the primary Class E use.

1.5. The unit is current operated as a 'Chicken Valley' and would have been opened between 2023-2024 based on Google Street View photo records. It appears to primarily operate as a hot food takeaway (Sui Generis) with minimal seating (fewer than five tables and no seating at basement level). The business is advertised online as a fast-food takeaway with delivery service. The Chicken Valley website states that 'Chicken Valley is one of the best fast-food restaurants'.

1.6. Based on the evidence submitted the applicant has not demonstrated how the use operated as a consistent mixed-use takeaway and restaurant. Instead, evidence and available information suggests a transition from a restaurant/cafe with ancillary, mainly cold food takeaway services (Class E) to a hot food takeaway with ancillary seating (Sui Generis).

1.7. Recommendation

1.8. Taking into account the evidence submitted by the applicant, and the Council's knowledge of the site and its planning history, the evidence does not irrevocably demonstrate that beyond doubt the premises has operated as a mixed restaurant and hot food takeaway (Sui Generis) use for a period of ten years or more.

1.9. In the absence of adequate evidence to support, on the balance of probabilities, that the business has operated as a mixed-use restaurant and hot food takeaway for a period of ten years or more, it is recommended that the certificate of lawfulness should be refused.