

Delegated Report

Planning Reference 26/00121/CLE
Applicant(s) Miss Diana Warren
Ward Barlestone, Nailstone, and Osbaston



Hinckley & Bosworth
Borough Council

Application Site 31 Avondale Road, Barlestone, Nuneaton

Proposal Certificate of existing lawful development relating to the use of the front room of dwelling for infant feeding medical and health services (Sui Generis)

Case Officer Sullivan Archer (Senior Planning Officer)

1. Recommendations

1.1. Grant Certificate of Lawful Existing Use

2. Planning Application Description

- 2.1. This is an application for a Lawful Development Certificate for an existing use to confirm, on the balance of probabilities, that the front northern room on the ground floor at 31 Avondale Road, Barlestone has been utilised for the provision of medical and health services, such as surgical and other associated holistic services, specialising in frenotomy and infant feeding consultations attached to the residence of the practitioner (Sui Generis) for a continuous period of ten years or more.

3. Description of the Site and the Surrounding Area

- 3.1. The application site comprises a two-storey residential property that is situated to the south of, but within, Barlestone on the eastern side of Avondale Road. The property features a gable-ended dual pitched roof and a front gabled pitched roof and a pitched dormer window on its front elevation. The property is constructed with a red brick finish and benefits from a partial white rendered finish on the first floor of its front elevation.
- 3.2. The surrounding area is wholly residential in character with residential properties in all directions from the site. Public Footpath R103 and its associated green space separate the site from the residential properties to the north of the site and there is an area of off-street parking and garages opposite the site. Beyond 33 Avondale Road to the south is Barlestone Community Centre and Bosworth Road Park.

4. Relevant Planning History

- 4.1 There is no relevant planning history within this application site that would be applicable to the current development proposals.

5. Publicity

- 5.1 The application is for a Certificate of Lawful Existing Use and no publicity is necessary. Nevertheless, the application has been publicised by sending out letters to local residents and a site notice was posted within the vicinity of the site. No responses were received.

6. Consultation

- 6.1. The application is for a Certificate of Lawful Existing Use and no consultation is necessary. However, Barlestone Parish Council were consulted on the application, who raised no objection to the application.

7. Policy

- 7.1. Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and Section 191 of the Town and Country Planning Act 1990, as amended by Section 10 of the Planning Compensation Act 1991, provide advice and guidance in respect for applications for Certificates of Lawfulness of Existing Use.
- 7.2. Planning Practise Guidance confirms that the Applicant is responsible for providing sufficient information to support the application and that such evidence should be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

8. Appraisal

- 8.1. The time period for immunity from enforcement action for this breach of planning control is 10 years. As such, the key issue for consideration is whether the land and building in question have been used continuously for an agricultural use for a period of 10 years from the date of this application.
- 8.2. In applications such as this, if the Local Planning Authority has no evidence itself to contradict or otherwise make the Applicant's version of events less than probable, there is no good reason to refuse the application, provided that the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
- 8.3. It is against this legislative framework that the application is assessed.
- 8.4. The Applicant has provided information that demonstrates that their existing business and use of the application site were registered with the Care Quality Commission ('CQC') since 01 September 2022, and the summary of the CQC's last inspection of the business from 08 December 2021 confirmed that CQC have been regulating the services at this property since 13 March 2019.

- 8.5. The Applicant has also provided insurance information that confirms that they have been insured for the medical use since October 2015 alongside self-assessment tax information since the 2015/16 financial year. In addition, a mortgage statement from 2017 confirmed that the front room of the property was utilised for an infant healthcare service.
- 8.6. Ultimately, the Applicant has submitted a letter signed from the treasurer of the Association of Tongue-Tie Practitioners, which confirms that the medical service has operated from this application site since January 2016.
- 8.7. In summary, through a variety of documents, including the signed letter from the Association of Tongue-Tie Practitioners, the Applicant has demonstrated that the front room of the application property has been utilised as an infant feeding medical and health services Sui Generis use for a continuous period of ten years or more. The Council has no information to contradict the Applicant's claims, and, on the balance of probabilities, the use of the application site can be considered lawful and immune from Enforcement Action. A Certificate of Lawful Existing Use may therefore be granted.

9. Equality Implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states: -
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; and
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.
- 9.3 There are no known equality implications arising directly from this development.
- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1. The information included in the application for a Certificate of Lawful Existing Use has sufficient evidence to demonstrate that the infant feeding medical and health services Sui Generis use business at 31 Avondale Road, Barlestone has been operating for a period of 10 years at this site. On the balance of probabilities, the use of the application site would be considered lawful and immune from Enforcement Action. It is therefore recommended that a Certificate of Lawful Existing Use is granted.

11. Recommendation

- 11.1 **Grant Certificate of Lawful Existing Use.**