

## **Car Park, Upper High Street, Epsom, Surrey, KT17 4QY**

Application to establish the lawful status of the existing use of part of car park for hand car washing

<b>Ward:</b>	<b>Town Ward;</b>
<b>Contact Officer:</b>	<b>Tom Bagshaw</b>

### **1 Plans and Representations**

- 1.1 The Council now holds this information electronically. Please click on the following link to access the plans and representations relating to this application via the Council's website, which is provided by way of background information to the report. Please note that the link is current at the time of publication, and will not be updated.

Link: <http://eplanning.epsom-ewell.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PZ7J1EGY0DE00>

- 1.2 The application is referred to the Planning Committee as the proposal is the Borough council is the applicant and is upon Council owned land.

### **2 Summary**

- 2.1 This application relates only to the lawful use of the site in a planning context and does not constitute the granting of a licence. The applicant is seeking a Certificate of Lawful Use to regularise the operation of a hand car wash within the Epsom Town Hall Car Park.
- 2.2 The Town and Country Planning Act 1990 (as amended) has a provision within section 171 (3) which states that if an applicant can demonstrate that the continuous use of the site has been established over a period of ten years a Certificate of Lawful Use should be granted.
- 2.3 The applicant has supplied copies of operation licenses dating back until 2005.
- 2.4 Therefore it has been demonstrated that the use has been established for a minimum period of 14 years and which exceeds the minimum requirement of ten years.
- 2.5 A Certificate of Lawful Use can therefore be granted under Section 191 of The Town and Country Planning Act 1990 (as amended).

### **3 Site description**

- 3.1 The application relates to the main car park serving Epsom Town Hall and is located centrally within in Epsom Town Centre. The site is located within the Epsom Town Centre

- 3.2 The service is offered by operatives across the whole car park area and can take place within any bay. The service is therefore not restricted to specific bays.

#### **4 Proposal**

- 4.1 This application is for a Certificate of Lawful Use for hand car washing currently operating at the Town Hall Car Park, Upper High Street, Epsom,
- 4.2 This application is seeking to confirm the Lawful Use of the site for the hand washing of cars via section 191 of The Town and Country Planning Act 1990 (as amended) due to it being in continuous use for a period of more than ten years.

#### **5 Comments from third parties**

- 5.1 Certificate of Lawfulness are not required to undergo a process of public consultation.

#### **6 Consultations**

- 6.1 Not relevant for this type of application.

#### **7 Relevant planning history**

- 7.1 None relevant

#### **8 Legislative Framework**

- 8.1 Town and Country Planning Act 1990 (as amended)

#### **9 Planning considerations**

- 9.1 The sole consideration is whether the applicant has provided sufficient evidence and information to demonstrate that current use upon the site is lawful.
- 9.2 Section 171 and 191 of the Town and Country Planning Act 1990 (as amended) are applicable and key to the consideration of this case.

##### **Section 171**

- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

##### **Section 191**

##### **Certificate of lawfulness of existing use or development.**

- (1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a) the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

(4) 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, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

- (c) give the reasons for determining the use, operations or other matter to be lawful; and
  - (d) specify the date of the application for the certificate.
- (6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.
- (7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—
- (a) section 3(3) of the Caravan Sites and Control of Development Act 1960 [or section 7(1) of the Mobile Homes (Wales) Act 2013;]
  - (b) section 5(2) of the Control of Pollution Act 1974; and
  - (c) section 36(2)(a) of the Environmental Protection Act 1990.

### **Evidence**

- 9.3 The applicant has provided car park valet licenses for the following time periods:

Car Parking Licence - 27th February 2004 until 26th February 2007

Car Parking Licence - 27th February 2007 until 26th February 2009

Car Parking Licence - 27th February 2009 until 26th February 2014

Car Parking Licence - 27<sup>th</sup> February 2014 until 26<sup>th</sup> February 2017

Car Parking Licence - 27th February 2017 until 26th July 2017

The applicant has provided an affidavit to cover the missing period of occupation from 27<sup>th</sup> of July 2017 until 26<sup>th</sup> of November 2019

- 9.4 The evidence demonstrates that the car park valet license has been in operation for a 14 year time period which exceeds the ten year requirement set out in section 171 (3) of The Town and Country Planning Act 1990 (As Amended)
- 9.5 The proposed development can therefore be granted a Certificate of Lawful Use under Section 191 of The Town and Country Planning Act 1990 (As Amended).

### **10 Conclusion**

- 10.1 It has been demonstrated that the site has been in continuous use as a hand car wash for a period of more than 10 years and as such, is in accordance with Section 171 (3) of The Town and Country Planning Act 1990 (as amended) in this regard. A Certificate of Lawful Use can therefore be issued under Section 191 (Lawful Development Existing Use) of the Town and Country Planning Act 1990 (as amended).

## **11 Recommendation**

- 11.1 Certificate of Lawful Use approved under Section 191 of the Town and Country Planning Act 1990 (as amended)

Reason: The use has been in continuous operation for a period of greater than ten years in accordance with section 171 (3) The Town and Country Planning Act 1990 (as amended)

### **Informative:**

- (1) **In dealing with the application the Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in the Core Strategy, Supplementary Planning Documents, Planning Briefs and other informal written guidance, as well as offering a full pre-application advice service, in order to ensure that the applicant has been given every opportunity to submit an application which is likely to be considered favourably.**