

DELEGATED FILE NOTE

CASE OFFICER: ...Harriet Sanders.....

**APPLICATION
REFERENCE**

**BRIEF DESCRIPTION OF
DEVELOPMENT**

APPLICATION SITE

24/01948/LDCE

Continuous use as a hot food takeaway
on the ground floor with ancillary living
accommodation on the upper floor.

28 And 28A Nightingale Road
Hitchin
Hertfordshire
SG5 1QU

Submitted Plan Nos

Location Plan

1.0 Policies

2.0 **Site History**

2.1 88/01070/1 - Installation of a new shop front. CP 04/08/1988.

- The approved plans show Hitchin Chop Suey Bar signage.
- The applicant is Hitchin Chop Suey.
- The use noted on the application form is commercial.
- The red line area is similar to the current application but slightly larger – includes a small area to rear of property which is now excluded from the current LDCE application.

3.0 **Representations**

3.1 Not applicable.

4.0 **Planning Considerations**

4.1 **Site and Surroundings**

4.1.1 The site consists of a two storey, mid terrace unit with the Hitchin Chop Suey take away at ground floor and living accommodation on the first floor.

4.2 **Proposal**

4.2.2 A Lawful Development Certificate Existing is sought for “Continuous use as a hot food takeaway on the ground floor with ancillary living accommodation on the upper floor.”

4.3 **Key Issues**

4.3.1 Section 171b of the Town and Country Planning Act 1990 (Amended) states that no enforcement action can be taken on a breach of planning control if a period of 10 years, beginning from the date of the breach, has passed.

4.3.2 The key planning consideration is therefore whether the applicant has provided sufficient evidence to successfully demonstrate, on the balance of probabilities, that the site has been used as a hot food takeaway on the ground floor with ancillary living accommodation on the upper floor for a continuous and uninterrupted period of at least 10 years.

4.3.3 A Statutory Declaration by Chung Wah Yip (former owner) has been submitted in support of the application. The Statutory Declaration provides the following evidence:

- A lease was taken on 28 and 28a Nightingale Road in 1977 by Chung Wah Yip and their brother which was registered with the Land Registry.
- The business was registered as Hitchin Chop Suey Bar on 29th September 1977.
- Copy of menu submitted.
- Copy of certificate of registration submitted showing the registration of the trading name Hitchin Chop Suey on 29/09/1977 and copy of certificate of registration for VAT which states effective date of 29/08/1977.
- Throughout their occupation of the property from 1977 the business of a hot food Chinese take away trading under the name of Hitchin Chop Suey Bar traded continuously and without interruption or objection from any person or authority.

- Freehold bought in 1984 – copy of conveyance of the property dated 28/09/1984 submitted. Continued to operate as hot food take away.
- 27/04/2013 to 28/01/2024 property let to their brother Chung Kin Ip who occupied the property and continued to operate the business as a hot food take away.
- Property then occupied and purchased by current occupiers (purchase 13/03/2024) and continues to be operated as hot food take away. Copies of sale and purchase and transfer deeds submitted.

4.3.4 In addition to the above evidence, it is noted from the planning history that consent was given on 04/08/1988 for Hitchin Chop Suey Bar signage. The applicant was Hitchin Chop Suey.

4.3.5 A visit to site confirmed that the premises is currently operating as a hot food take away under the name Hitchin Chop Suey.

4.3.6 The evidence submitted is comprehensive and provides sufficient information, on the balance of probabilities, that the premises has been in continuous use as a hot food takeaway on the ground floor with ancillary living accommodation on the upper floor since 1977. On the basis of the evidence submitted, it is considered that a Lawful Development Certificate for an Existing Use can be issued by the Local Planning Authority.

4.4 **Climate Change Mitigation**

4.4.1 Not relevant in this case.

4.5 **Conclusion**

4.5.1 The evidence submitted is comprehensive and provides sufficient information, on the balance of probabilities, that the premises has been in continuous use as a hot food takeaway on the ground floor with ancillary living accommodation on the upper floor since 1977. On the basis of the evidence submitted, the planning history and site visit, it is considered that a Lawful Development Certificate for an Existing Use of the premises edged red on the submitted plan for continuous use as a hot food takeaway on the ground floor with ancillary living accommodation can be issued by the Local Planning Authority.

5.0 **Recommendation**

5.1 That a Lawful Development Certificate for an Existing Use be GRANTED for the following reason:

The evidence submitted, on the balance of probabilities, shows that the site has been used as a hot food takeaway on the ground floor with ancillary living accommodation for a continuous and uninterrupted period of at least 10 years. In accordance with Section 171B of the Town and Country Planning Act 1990, no enforcement action can be taken upon a breach of planning control if a period of 10 years has passed from the date of the original breach. As such, a certificate of lawfulness can be issued for continuous use as a hot food takeaway on the ground floor with ancillary living accommodation.

1. The evidence submitted, on the balance of probabilities, shows that the site has been used as a hot food takeaway on the ground floor with ancillary living accommodation for a continuous and uninterrupted period of at least 10 years. In accordance with Section 171B of the Town and Country Planning Act 1990, no enforcement action can be taken upon a breach of planning control if a period of 10 years has passed from the date of the original breach. As such, a certificate of lawfulness can be issued for continuous use as a hot food takeaway on the ground floor with ancillary living accommodation.

Signed  Shaun Greaves Determining Officer	Development Management North Hertfordshire District Council Council Offices Gernon Road Letchworth Herts SG6 3JF
Date: 4 February 2025	