

Application Number:	24/01177/CPL
Location:	Bamford Arms, 520 Bury Road, Rochdale, OL11 4DQ
Proposal:	Certificate of lawfulness from public house class E(b) to a proposed children's day care centre Class E(f)
Applicant:	Mr E Smethurst
Case Officer:	Anna Hayes
Recommendation:	Refuse

SITE

The application site relates to 520 Bury Road in Rochdale. The application form refers to the building as the 'Bamford Arms' and the site location is therefore detailed as such; however, the supporting statement refers to the building as 'Café Aylanto'.

520 Bury Road ('the site') is a large detached two storey building set back from Bury Road, featuring a garden and outdoor decking area to the front and a large car park to the rear, accessible via Fieldhead Avenue. The property includes single storey flat-roof extensions at the rear and covered canopies near the entrance doors.

The site is located within a predominately residential area and is within the defined Urban Area according to the UDP Proposals Map.

PROPOSAL

The application seeks a Certificate of Lawfulness under section 192 of the Town and Country Planning Act 1990.

The application seeks confirmation that the proposed use of the site as children's day care centre (Use Class E) would be lawful in planning terms.

The following information has been submitted in support of the application:

Received 26th November 2024

Completed application form signed and dated 25.11.2024

Site Location Plan dated 26.11.2024

Drawing 19-081-002 Existing Site Plan

Drawing 19-081-010 Existing GF Plan (Superseded 25 June 2025)

Drawing 19-021-011 Existing FF Plan (Superseded 25 June 2025)

Drawing 19-081-020 Existing Elevations

Drawing 19-081-021 Existing Elevations

Drawing 19-081-022 Existing Elevations

Drawing 19-081-222 A Proposed Elevations

Drawing 19-081-210 A Proposed GF Plan

Drawing 19-081-212 A Proposed Outdoor Plan

Drawing 19-081-202 A Proposed Site Plan

Drawing 19-081-220 Proposed Elevations

Drawing 19-081-221 A Proposed Elevations

Supporting statement: Change of use Public House to children's day care (superseded 25 June 2025)

Additional information received 25 June 2025:

Supporting Statement: Change of use: Restaurant to Children's Day Care

Drawing 19-081-010 Existing Plans (Ground Floor)
Drawing 19-081-011 Existing Plans (First Floor Plan)

RELEVANT PLANNING POLICY

National Guidance

National Planning Practice Guidance (NPPG)

The applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved (PPG Paragraph: 006 Reference ID: 17c-006-20140306).

Other

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

RELEVANT SITE HISTORY

01/D39217 - ERECTION OF EXTENSION TO FORM STAIRCASE FOR ACCESS TO FIRST FLOOR RESTAURANT ON WESTERN SIDE OF EXISTING PUBLIC HOUSE – Approved subject to conditions 30.10.2001

06/D48431 - EXTENSIONS AND ALTERATIONS TO PUBLIC HOUSE – Refused 20.02.2007

08/D50479 - EXTENSION AND ALTERATIONS TO PUBLIC HOUSE AND CONVERSION OF FIRST FLOOR TO RESTAURANT - RESUBMISSION D48431 – Approved subject to conditions 03.06.2008

20/00590/FUL - Change of use from public house/restaurant to childrens' day nursery including construction of canopy over new rear entrance and alteration and extension of boundary treatments – Withdrawn 10.09.2020

CONSULTATION RESPONSES

There is no statutory requirement to consult third parties including parish councils, or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application (NPPG paragraph 08 Reference ID: 17c-008-20140306).

As there is no statutory requirement to consult third parties, no letters were sent to neighbouring occupiers/owners when this application was validated.

REPRESENTATIONS

Not applicable, as above.

ANALYSIS

This application for a Certificate of Lawfulness is made under Section 192 of the Town and Country Planning Act 1990. An application under s192 can be made if any person wishes to ascertain whether the following would be lawful –

- a) Any proposed use of buildings or other land; or,

- b) Any operations proposed to be carried out in, on, over or under land.

S192 (2) states that: 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 this application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

There are different components to consider in the assessment of this application, namely:

- The current lawful use of the building; and,
- Whether the change to a children's day nursery, from the current use of the building, would be a permitted change not requiring planning permission.

The current lawful use of the building

The application claims the current use class of the building to be Class E, since it is occupied by a restaurant – 'Café Aylanto'. Therefore, the applicant claims that the proposed change to a Day Nursery, which also falls within the same use Class E, would be a permitted change not requiring planning permission. However, based on the information before Officers, there is reason to believe that the current lawful use of 520 Bury Road is a public house (Sui Generis) and not a restaurant (Use Class E). This assessment is set out below:

- The building is currently occupied by 'Café Aylanto' and according to the applicant, it has been since December 2019. The applicant describes Café Aylanto as '100% a restaurant' which does not serve alcohol. The application therefore claims that the current use class of the building is Class E.
- However, the original submission documents contained mixed information often referring to 520 Bury Road as a Public House, as well as a restaurant. This was flagged with the applicant and amended documents were received 25 June 2025, as well as amended existing floor plans, removing any reference to the site currently being used as a public house.
- It is clear from Google Street view that the building has been occupied as Café Aylanto from at least April 2021, and has been operating as such until the present day.
- However, based on the available planning history and available Google Street View imagery the site was notably in use as a Public House (Sui Generis) from 2012 to 2019. Therefore, at some point in time between 2019 and 2021, the operation of the site changed from a public house (Sui Generis) to a restaurant (Class E).

The time stamps on this application are important, particularly when establishing the existing lawful use and at what point the building changed to a restaurant from a public house. The following is noted:

- Changes to Use Class Order on 23 May 2017 removed permitted development rights for the change of use from Class A4 (drinking establishments) to Class A3 (Restaurants and Cafes). Therefore from 23 May 2017, planning permission was needed to change from a pub to a restaurant.
- On 23 May 2017, Class AA of the GPDO was also introduced which enabled 'drinking establishments' to change to 'drinking establishments with expanded food provision' and vice versa without planning permission (SI 2017/619).

- As of May 2020 it was declared in the application form for application 20/00590/FUL that the building was in use as a Pub/restaurant with para 4.0 of the submitted supporting statement referring to the building as a “busy pub”. However, in contradiction, Q17 of the application form referred to the existing use as a “A3 Restaurant and Café”.
- Notwithstanding what is written in Q17 of the form, it would seem apparent to Officers that the use at that time was A4 – a pub with expanded food provision in recognition of the supporting information, Google imagery and given the following planning history:
 - 01/D39217 - ERECTION OF EXTENSION TO FORM STAIRCASE FOR ACCESS TO FIRST FLOOR RESTAURANT ON WESTERN SIDE OF EXISTING PUBLIC HOUSE – Approved subject to conditions 30.10.2001
 - 06/D48431 - EXTENSIONS AND ALTERATIONS TO PUBLIC HOUSE – Refused 20.02.2007
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- As evidenced on Google Street view imagery in August 2019 the building was in use as a public house. The submission of application 20/00590/FUL in May 2020 also confirms that the building was in use as a public house at that time.

The above timeline of events has been shared with the applicant which has not been disputed.

Following changes to the Use Class Order in May 2017, the Council has received no such planning application for the change of use from a public house to solely a restaurant, not serving alcohol, as is in use today.

Therefore, based on the available information before the Council, it is found that the current lawful use of the building is that of a Public House (Sui Generis). Planning permission has not been granted for the change of use from a Public House (Sui Generis) to a restaurant (Class E) and there is no permitted change from Sui Generis to Use Class E. The current use of the building as a restaurant is therefore found to be a breach of planning control.

Whether the change to a day nursery would be a permitted change

Since the current lawful use of the building has been established as a public house, falling within use class Sui Generis, the change of use to a day nursery (Class E) would not be permitted and would require an application for planning permission.

RECOMMENDATION

Refusal.

Reason for refusal:

The lawful use of 520 Bury Road is a Public House/ Restaurant falling within use class Sui Generis. The change of use from a Public House/ Restaurant (Sui Generis) to a Day Nursery

(Use Class E(f)) is not a permitted change and therefore would require an application for planning permission.

Notes for Applicant:

For the avoidance of doubt, the decision relates to the following documents and drawings:-

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Completed application form signed and dated 25.11.2024

Site Location Plan dated 26.11.2024

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Drawing 19-081-010 Existing GF Plan (Superseded 25 June 2025)

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	Date	Officer
Report Completed	11.07.2025	Signed: AH
Authorisation	24/07/25	LA