

Town and Country Planning Act 1990, Section 191
Planning and Compensation Act 1991, Section 10
Planning (Wales) Act 2015.

PLANNING STATEMENT IN SUPPORT OF AN APPLICATION
FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR EXISTING
USE AT 'THE SURGE' P.H. 74, COMMERCIAL ROAD,
TAIBACH. PORT TALBOT, SA13 1LR.

On behalf of Applicant: **Christopher Trainor.**



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PHOTOGRAPH ON FRONT COVER: Image of The Old Surgery PH dated 19th April 2012
[source: internet site
https://commons.wikimedia.org/wiki/File:The_Old_Surgery,_Taibach,_Port_Talbot_-_geograph.org.uk_-_2943050.jpg]

CONTENT:

INTRODUCTION.

A3 USE AND THE RELEVANT PLANNING REGULATIONS.

EVIDENCE FOR THE GRANT OF A LAWFUL DEVELOPMENT CERTIFICATE.

APPENDIX A – PHOTOGRAPHIC SURVEY OF THE APPLICATION SITE AS OF NOVEMBER 2021.

APPENDIX B – FORMAL PLANNING CONSENT FOR CHANGE OF USE FROM SURGERY PREMISES TO USE AS A LICENCED BAR AND RESTURANT. 1984.

APPENDIX C – FORMAL PLANNING CONSENT FOR ALTERATIONS TO PUBLIC HOUSE/RESTURANT. 1985.

APPENDIX D – BUSINESS FINANCIAL EVIDENCE INCLUDING PUBLISHED RETURNS TO COMPANIES HOUSE.

APPENDIX E – THE STATUTORY DECLARATION OF MR CHRISTOPHER TRAINOR.

APPENDIX F – THE STATUTORY DECLARATION OF MR KEVIN ANTHONY TOSSELL

APPENDIX G – EXTRACTS FROM FACEBOOK PAGES/GROUP ON ‘THE SURGE’.

APPENDIX H – EXTRACT FROM NEATH PORT TALBOT COUNTY BOROUGH COUNCIL’S CURRENT 2021 PUBLIC REGISTER OF LICENCED PREMISES.

APPENDIX I – PRINT OF ONLINE ENTRY FOR ‘THE OLD SURGERY PH’ ON FOOD/RESTAURANT WEB SITE ‘RESTAURANT GURU’

APPENDIX J – CONFIRMATION FROM NEATH PORT TALBOT COUNTY BOROUGH COUNCIL BUSINESS RATING SECTION RELATING TO THE USE OF THE PREMISES.

CONCLUSION

INTRODUCTION.

The following statement is on behalf of the Applicant, Mr Christopher Trainor, in support of an application under Section 191 of the Town and Country Planning Act 1990.

The statement expands upon Section 9 of the application form and sets out the purpose of the application and the evidence for the granting of a Lawful Development Certificate for the existing use of the application site and premises as a Licenced Public House within Use Class A3 of the Town and Country Planning (Use Classes) Order.

This application concerns the overall planning use of the site and does not seek authorisations for any physical works of building. The purpose of the application is to aid the Applicant and current owner of the premises in the sale of the site and business. A purchaser has been found, but requires the Lawfulness of the current A3 Use of the site to be confirmed by the Local Planning Authority (LPA) before proceeding to finalise the purchase.

The application description has been agreed by the Applicant (vendor) and the purchaser as one which should allow the sale/purchase to proceed. It is understood that, in particular the LPA confirmation of the wording of the lawful use of the premises as being within an A3 Use is required, as opposed to only describing the current Public House Use as already consented in 1984.

The application site is as shown, outlined in Red within the Site Location Plan which accompanies this application. The site comprises of a single storey, brick built building with grey slate roof, perhaps typical of 1950's design, together with an external terraced seating area and small tarmac car park. The building's original use was as a Doctor's surgery, hence the later name 'The Old Surgery' and more recently 'The Surge' being given to the current business.

Following the relocation of the Doctor's surgery in the 1980's to a more suitable premises and facilities, the application site was subject to a formal application for 'Change of Use from surgery premises to a Licenced Bar and Restaurant'. The then Local Planning Authority for the area, Afan Borough Council granted consent for the Change of Use, which was duly implemented with the premises becoming 'The Old Surgery' Public House.

The character and use of the site has not significantly changed since that Change of Use was granted back in the 1980's. In the early 2000's, a part of the site to the rear south-west boundary was sub-divided off and subject to applications for a new, detached, 2 storey dwelling house. This dwelling was eventually built by the then owners of the Public House who eventually sold their interest in the pub. Whilst this rear part of the site occupied by the dwelling no longer forms part of the originally consented site, the remainder of the site

containing the public house, building and ancillary car parking and external terrace and yard remains in the same use.

A3 USE AND THE CURRENT RELEVANT PLANNING REGULATIONS.

The formal consent issued back in 1984 was prior to the introduction of the Town and Country Planning (Use Classes) Order 1987 and described the development as a 'Change of Use from Surgery Premises to Use as a Licenced Bar and Restaurant'. The introduction of the Order grouped various land uses together into 'Use Classes' and in conjunction with subsequent Development Orders, gave certain permitted development rights to change uses between classes.

The Schedule to the 1987 Order defined the A3 use class as being for Food and Drink uses, specifically 'Use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises'. As such, the Class encompasses a wide variety of types of use/activity from that of a Public House or Wine Bar, through to a formal restaurant, café or hot-food take away or indeed, any combination or mix of such activities. Whilst in England the A3 use class has been further divided separating 'Drinking Establishments' and 'Hot Food Take-aways' into new Use Classes A4 and A5, in Wales, the full range of possible A3 uses remain within the single class.

Throughout this application, reference is made in this statement and documentation in evidence describing the use of the application site premises as a Public House, Licenced Bar, Restaurant but all are interchangeable for planning purposes falling clearly within Use Class A3.

EVIDENCE FOR THE GRANT OF A LAWFUL DEVELOPMENT CERTIFICATE.

The following evidence is submitted in support of this application in order to demonstrate the current existing use of the application site and that such a Use has been continually operated for a period of 10 years prior to this application. More-over that the Use remains in accord with the formal planning permission granted by the Local Planning Authority.

Appendix A – Photographs of the current application site as of November 2021.

This photographic survey clearly illustrates a building in A3 Use as a Public House. Externally the building has evident signage being the name of the pub and the ability to watch sporting events on Sky satellite T.V., typical of many public houses. To the secure rear yard, the entrance to the beer cellar, the commercial kitchen extract flue and an empty beer barrel are all characteristic of such Use.

Internally, the building contains a bar with beer pumps and optics shelf, typical refrigeration and glass washing equipment, the building is largely given over to customer space within the bar and contains table and chairs (stacked), column mounted shelving to rest drinks upon and around the walls and ceiling, a P.A. system and disco lighting typical of many public houses used to holding live and recorded music events in association with the pub.

Separate male and female toilet facilities rooms lead off the main entrance corridor to the bar and a kitchen/prep area leads from the bar servery to the rear secure yard.

The site then, in terms of its physical appearance, character, fixtures, fittings and internal furnishings are clearly that of a public house within Use Class A3.

Appendix B- The Formal Planning Consent of 1st November 1984 for Change of Use from Surgery premises to a Licenced Bar and Restaurant.

The consent was issued by Afan Borough Council as the Local Planning Authority for the area at the time. The consent referenced 2/2/84/4862/03 is recorded in the current Neath Port Talbot County Borough Council online register of planning applications as P1984/4862. The consent is clarified by Condition 2 as being for the Use only (as opposed to giving any consent for alterations and extensions) and whilst the description of development is defined as 'Licenced Bar and Restaurant', there is no further specific restriction by Condition relating to particular parts of the building or proportions of the site given over to Bar or Restaurant uses.

In terms of the Planning Conditions upon the formal consent notice, we have no records currently as to their formal discharge but these should be considered as being complied with for the purposes of this Certificate application. Condition No.3 (Boundary treatments), 4 (Works affecting highways) and 5 (Car parking) are worded in such a way as to not comprise fundamental pre-start Conditions going to the heart of a permission. Whilst the current Applicant has no record of formal discharge of these Conditions, having only purchased the site in 2015, there is a high probability that they were fully complied with; the permission was implemented and subject to a later planning consent under reference 2/4/85/5008/03 for 'Alterations to Public House/Restaurant', approved without Conditions on 7th March 1985. The current Applicant was not made aware of any LPA Enforcement actions relating to these Planning Conditions when he purchased the premises in 2015 and so as far as we are aware, all Planning Conditions were complied with to the satisfaction of the relevant authorities at the time of implementing the consent. Irrespective of this, such Conditions, due to the passage of time and detail wording, would longer hold any force or relevance.

Remaining Conditions No.6 (Hours of opening) and 7 (Noise) are operational Conditions complied with throughout the Use, though these days, it is suggested more appropriate control mechanisms exist for the Authority in the form of Licencing or Statutory nuisance provisions.

Appendix C – Formal Planning Consent of 7th March 1985 for Alterations to Public House/Restaurant.

This consent referenced 2/4/85/5008/03 is again from Afan Borough Council.

As indicated previously, this current application for a Lawful Development Certificate concerns only the use of the site and so the 1985 consent to the physical alterations is

submitted as evidence here only to demonstrate further the implementation of the earlier change of use.

Appendix D – Business financial records including Statutory Returns to Companies House.

Since the Applicant's purchase of the application site back in 2015, the business has been run on a Limited Company footing and so from 2015 up to the present date, there are a plethora of business type records to choose from. Business records are properly kept by a firm of professional Accountants and tax returns duly made each year to HMRC and necessary filings with Companies House. The business is a properly registered (England and Wales) company No. 09751238 and a 2016 Companies House incorporation Confirmation Statement indicating the Applicant as Director is enclosed.

As evidence in support of this application, we provide copies of the annual statement of returns filled with Companies House for the years ending August 2016 (covering 2015/2016 and filed 2017), August 2017 (covering 2016/2017 and filed April 2018), August 2018 (covering 2018/2019 and filed July 2019), August 2019 (covering 2018/2019 and filed August 2020), August 2020 (covering the period 2019/2020 and filed in June 2021). Accounting returns for this year are of course not available or due to be filed until 2022. Nonetheless, the documents provided show an active A3 business being run at the site throughout the applicant's ownership. Substantial further information in the form of individual invoices/transactions between The Surge Pub Ltd. and the supplying Brewery covering 2015 to 2021 can be provided if further evidence is necessary.

Prior to the Applicant's purchase, The Old Surgery Public House was run on a sole trader basis by the former owner. As such, records are not publicly accessible and little was passed over to the Applicant during his purchase. Images of records of accounts for 2011/2012 and 2012/2013 are enclosed however, and again show active A3 business being carried out at the premises between 2011 and 2013. Whilst not a full and complete financial record then, it is suggested that the Statutory Declarations made by the Applicant and by Mr Kevin Tossell, a regular customer and even former employee at the Pub, are more than sufficient to prove the continuing A3 Use over the full 10 years prior to this application.

Appendix E – The Statutory Declaration of Mr Christopher Trainor.

Appendix E contains the Statutory Declaration of the Applicant, Mr Christopher Trainor and has been properly formatted and authorised (witnessed) by a solicitor qualified to commission Oaths. As such, the Declaration must be afforded considerable weight in the determination of this application.

As the current owner of the application site since 2015 and Director of The Surge Pub Ltd., Mr Trainor has unrivalled detailed knowledge of the A3 Use over this time. This is set out in section (i) of the Stat. Declaration and the fact that the site was a fully functioning Public House (A3 Use) when he purchased it in 2015.

Section (ii) of the Declaration recalls the purchase process and that no adverse information or warnings in relation to any planning breaches of control, were given by Local Authority Land Searches replies during conveyancing.

Section (iii) of the Declaration gives clear evidence that Mr Trainor has good knowledge of the application site premises and its uses before his purchase and indeed, during much of his life. As a youth, he recalls his parents taking him for food and soft drinks at The Old Surgery PH on the weekends following junior football club meetings. In his 20's, he lived opposite the premises and regularly visited the Old Surgery PH as a customer socially for drinks and food.

Following 2004, Mr Trainor moved out of 73, Commercial Road (his home opposite The Old Surgery PH) but continued to own it and rent it out to tenants. As Landlord, he continued to have reason to regularly visit the close vicinity of the application site and can say that the premises continued in its A3 use between 2004 and his purchase of the pub in 2015.

Section (iv) clarifies for the avoidance of doubt, that references to The Old Surgery Public House and The Surge Pub, refer to the same premises being the application site.

Finally, Section (v) confirms that throughout his ownership since 2015, the application site has continued in its A3 use.

Appendix F – The Statutory Declaration of Mr Kevin Anthony Tossell.

Appendix F contains the Statutory Declaration of Mr Kevin Tossell, who lives very locally to the application premises and has been a regular customer of The Surge over many years. The Declaration is properly formatted and authorised (witnessed) by a solicitor qualified to commission Oaths. As such, the Declaration must be afforded considerable weight in the determination of this application.

Mr Tossell is able to state within the declaration that the application site premises has been in A3 use as a Licenced Public House over the last 10 years.

Appendix G – Extracts from Facebook pages/groups on 'The Surge' Taibach.

The Old Surgery PH, or The Surge as it became called in recent years, is a well-known local landmark building in Taibach with a good local reputation for live music and events. A simple electronic search for evidence on the site and its use reveals a very active 'social' scene locally which includes The Surge in publicly accessible web pages from Facebook containing a substantial number of entries/posts from people enjoying themselves.

The link, [Facebook.com/pages/The-Old-Surgery-Pub/209200389184804](https://www.facebook.com/pages/The-Old-Surgery-Pub/209200389184804) is full of publicly available images, stories and individual posts going back as far as October 2012 without the need to log-in or register. There is even a Facebook Group for The Surge. These posts are from multiple people, are all dated and many clearly identify the application site premises or location map and so provide very strong anecdotal evidence of the continuing and active

A3 Use of the premises over the last 10 years. We provide within this appendix, an extract of the posts, with a page for each year from 2021 going back to 2012.

Appendix H – Extract from Neath Port Talbot County Borough Council Statutory Register of Licenced Premises.

The appendix contains an extract from the current 2021 Statutory Register of Licenced Premises held by the Council. The application site, The Old Surgery, 74, Commercial Road, Taibach, is listed within the register with an entry for Music and the sale of Alcohol with the first grant of such licence going back to 2005.

Appendix I – Print of on-line entry for The Old Surgery PH on Food/Restaurant web site 'Restaurant Guru'.

This appendix contains information again sourced on-line and containing a listing for the application premises as one of the 75 bar/pubs listed within Port Talbot. It is an example of how the premises and its use are known and advertised.

Appendix J – Confirmation from Neath Port Talbot County Borough Council Business Rates Section.

This appendix contains information from the Councils records on Business Rates indicating that the application site is indeed subject to Business Rates as a Public House and has been so continually assessed since April 1990. For the purposes of this application, extracts from the rating list covering the period 2010 to the present are included.

CONCLUSION

This application concerns the existing use only of the application site. That use was the subject of a formal planning consent in 1984 and that use can be described as an A3 Use within the definitions set out in the Town and Country Planning (Use Classes) Order 1987.

In consideration of applications for Lawful Development Certificates, the onus of proof rests upon the applicant. However, the assessment of this proof by a Local Planning Authority must be on a reasonable basis and based upon a 'balance of probability' test. The planning merits of carrying out the use at the premises are also not relevant to the consideration of this application.

The applicant contends that this application contains substantial and sufficient evidence to prove the use of the site continuously over the required 10 year period prior to the application submission. We therefore ask that Certificate of Lawful Development be granted by the LPA.