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Submitted via Planning Portal PP-09142090

Dear Sir or Madam

Peel Property (Investments) Limited
Section 191 of The Town And Country Planning Act 1990 (As Amended)
Application to certify that the existing use of the building within Class E is lawful
Unit 9 (former Pizza Hut unit), Peel Centre, Harbrough Hill Road, Barnsley

Introduction

We write on behalf of our client, Peel Property (Investments) Limited, to apply for a Certificate pursuant to Section 191 of the Town and Country Planning Act 1990 (as amended), to certify that the existing use of Unit 9 (the former Pizza Hut unit) at the Peel Centre in Barnsley, for any purpose within Use Class E (Commercial, Business and Service) is lawful.

The application comprises this covering letter and the following documents:

1. The completed application forms and certificates.
2. Statutory Instrument 2020 No 757.
3. Site Location Plan Ref: MH1238-00.

The planning application fee of £462 has been paid electronically via the Planning Portal¹.

Application Site

The application site Unit 9 (the former Pizza Hut unit) at the Peel Centre on Harbrough Hill / Dryden Road in Barnsley. The unit comprises a single storey standalone unit at the Peel Centre. The unit measures approximately 300 sq.m. To clarify, the unit is currently unoccupied.

The Peel Centre is to the east but within walking distance of Barnsley town centre. It is situated in a well-established wider retail and commercial area, and forms an integral part of Barnsley's overall retail offer. The Retail Park currently comprises approximately 18,044 sq.m of retail and leisure floorspace, arranged over 11 units. The Retail Park is accessed via a signalised gyratory junction with Harbrough Hill Road (the A61).

Lawful Nature of the Existing Development

Section 191(a) of the Act states that an application for a Certificate of Lawfulness of Existing Use or Development should be submitted if '*...any person wishes to ascertain whether...any existing use of buildings or other land is lawful*'.

In this case, the applicant wishes to certify that the established use of Unit 9 is now within Class E and that any operation in that Class is lawful, namely:

¹ The application fee adopted is that applicable to a traditional planning application for a change of use which is the most appropriate fee category.



- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,
- (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,
- (c) for the provision of the following kinds of services principally to visiting members of the public—
 - (i) financial services,
 - (ii) professional services (other than health or medical services), or
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,
- (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,
- (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,
- (f) for a crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public,
- (g) for—
 - (i) an office to carry out any operational or administrative functions,
 - (ii) the research and development of products or processes, or
 - (iii) any industrial process,
 being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

On 21 July 2020, Statutory Instrument 2020 No. 757 was laid before parliament by the Government. It comprises a number of changes to the Town and Country Planning (Use Classes) Order 1987 (the “**Use Classes Order**”). The changes outlined within the Statutory Instrument became effective on 1 September 2020.

As set out above, the established use of the building is for ‘Restaurants and Cafes’. This operation was formerly classified within Use Class A3 of the Use Classes Order prior to 1 September 2020. This use was established under application reference B/04/0020/BA.

Statutory Instrument 2020 No. 757 introduces amendments to the Use Classes Order which seeks to simplify the classification of commercial uses. The effect of the new legislation is to revoke Use Classes A, B1 and D and replace those classes with a new, single classification covering ‘Commercial, business and service’ uses (Class E).

As the Local Planning Authority will be aware, moving from one operation to another within the same use classification is not development as defined by Section 55(2)(f) of the Town and Country Planning Act 1990 (**‘the Principal Act’**). Section 55(2)(f) states:

- (2) *The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –*
 - (f) *in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.*

It therefore follows that the existing lawful use of Unit 9 is for any operation within Class E of the Use Classes Order and that the use of all of the floorspace within Unit 9 is now correctly described as being within Class E ‘Commercial, business and services’.

Summary and Conclusion

This application seeks to certify that the existing use of Unit 9 at the Peel Centre, Barnsley for any operation within Class E is lawful.

The existing use of the floorspace at the Site is for 'retail' (formerly Class A3). The use classification of this operation now² falls within Class E of the Use Classes Order.

Section 55(2)(f) of the Principal Act is explicit that moving between operations within the same use classification does not constitute development of land. It follows that such operations do not require planning permission.

In light of the above, we respectfully request that the Council issues a Certificate, under Section 191 of the Act, to confirm that the use of the floorspace for any purpose within Class E is lawful.

For the avoidance of doubt, we request that the Certificate confirms all of the uses that the premises can be used for:

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,
- (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,
- (c) for the provision of the following kinds of services principally to visiting members of the public—
 - (i) financial services,
 - (ii) professional services (other than health or medical services), or
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,
- (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,
- (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,
- (f) for a crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public,
- (g) for—
 - (i) an office to carry out any operational or administrative functions,
 - (ii) the research and development of products or processes, or
 - (iii) any industrial process,being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

If you have any queries regarding the above or require any further information in order to be able to issue the certificate, please do not hesitate to contact Peter Whittingham or Olivia Pemberton at these offices.

Yours faithfully,

A solid black rectangular box used to redact the signature of the representative of Savills (UK) Limited.

Savills (UK) Limited
Planning

Encs.

Cc. R. Wheeldon and L. Taylor (Peel)

² Effective date is from 1 September 2020.