
2024/0311

Mr C Tibble

Lawful development certificate for retail and trade warehouse without compliance with condition 5 of planning permission reference 2012/0852

K D A Wholesale, Fall Bank Industrial Estate, Fall Bank Crescent, Dodworth, Barnsley, S75 3LS

Site Location and Description

The application relates to a single storey commercial unit that can be used for uses falling within use classes B1, B2, and B8. It forms part of an extensive, purpose built industrial/commercial area located close to junction 37 of the M1. The building provides 6,017 square metres of floor space. To the south is the railway line, beyond which are residential properties. The unit has ample parking and access is onto Fall Bank Crescent which is suitable for HGV traffic.

Planning History

2012/0852 – Change of use from B1, B2, B8 factory unit to trade warehouse (sui generis) – Approved (September 2012) subject to conditions specifically condition 5

Before the building is brought into use a scheme shall be submitted to and agreed in writing by the LPA to demonstrate that the proportion of the total annual retail sales generated by sales to the public under the retail club scheme shall not exceed 20%. The approved scheme shall be implemented prior to the use and retained thereafter.

Reason: To ensure that the development will not have an undue impact on the viability and vitality of an established centre in accordance with Core Strategy Policy CSP 31

Information was submitted in relation to this condition which was deemed acceptable, and the condition discharged under application 2012/ENQ/01844 in November 2012.

Proposal

This application is for Section 191 Certificate of lawfulness of existing use or development which is used for the following;

- (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,

The applicant seeks confirmation that the business has been running as a retail warehouse

Planning Context

S191 of The Town and Country Planning Act 1990 relates to the following;

- (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,

Guidance states

If the LPA has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

This reflects the ministerial advice that was formerly printed in Annex 8 to Circular 10/97, at paragraph 8.15. 'Evidence' from neighbours, or others objecting to the application, consisting of no more than doubt, disbelief or scepticism regarding the evidence adduced by the applicant does not amount to evidence contradicting or otherwise making the applicant's evidence less than probable.

A full award of costs is liable to be made on appeal under section 195 against an LPA which refuses an LDC in ignorance or defiance of the rule in Gabbitas.

Consultations

Legal Officer – There are no objections to issuing certificate.

Representations

There is no statutory requirement for Local Planning Authorities (LPA) to consult third parties, including neighbouring residents or parish councils on a lawful development certificate (LDC) application since an LDC application is a matter of fact and law and is not determined on its planning merits or judged against National or Local planning policies or guidance.

Assessment

A local planning authority can grant a certificate confirming that an existing use of land, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990. As with all such applications the LPA are only concerned with the factual background in this case to establish that any existing use of buildings; or any operations that have been carried out in, on, over or under land, are lawful; or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful

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 are lawful, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

As mentioned previously planning permission was granted under application 2012/0852 – Change of use from B1, B2, B8 factory unit to trade warehouse (sui generis) – subject to conditions.

Condition 5 states that:

Before the building is brought into use a scheme shall be submitted to and agreed in writing by the LPA to demonstrate that the proportion of the total annual retail sales generated by sales to the public under the retail club scheme shall not exceed 20%. The approved scheme shall be implemented prior to the use and retained thereafter.

Reason: To ensure that the development will not have an undue impact on the viability and vitality of an established centre in accordance with Core Strategy Policy CSP 31

Information was submitted in relation to this condition which outlined how the business would differentiate between retail and trade customers and was deemed acceptable, and the condition discharged under application 2012/ENQ/01844 in November 2012.

2no notarised statutory declarations have been submitted, 1no from the owner and 1no from Mr P Barnard who was employed by the owner on a freelance basis for approximately 25 years. Mr Barnard was employed to design an Electronic Point of Sale system which recorded sales, the category of sales, recorded reduction in stock numbers and distinguished between trade and retail sales. The statutory declaration provided by Mr Barnard outlines the details of active customer counts by calendar year dating to 2013. This information distinguishes between retail and trade sales, and demonstrates that since 2013 the majority of sales, over 80%, have been to retail sales rather than trade sales as originally intended.

BMBC have no evidence which conflicts with the evidence submitted and as a result of the above the local planning authority are provided with information satisfying them that the use and operations described in the application are lawful and, as such, a certificate should be granted.

Recommendation

Lawful development certificate granted.