

Planning Statement

Application for a Certificate of Lawfulness
for use of building as a retail unit

Unit 21 Cannon Way
Claycliffe Business Park
Braugh Green
Barnsley
South Yorkshire
S75 1JU

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Document Control Sheet

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1 INTRODUCTION

- 1.1** Planning & Design Practice is a town planning and architectural design consultancy consisting of chartered town planners and an architectural design team. The practice operates across England and Wales and has an excellent record of success.
- 1.2** The application has been prepared for and on behalf of 'The Pet Store' who are an independent pet supplies retailer. The company has 3 established stores across the Yorkshire region and the application site is the largest store in the group and is deemed as the 'main store' which started operating in February 2008 following success at a smaller premises. The unit is open 7 days a week. The premises is open from 09:00 – 18:00 Monday to Friday; 9:00 to 17:00 on Saturdays and 10:00 to 16:00 on Sundays.
- 1.3** Due to its independent status, the business is able to stock a range of pet supplies and foods rarely found elsewhere. The store also has a wide variety of pet equipment and has become a very popular outlet in the Barnsley and Wakefield area for the general public.
- 1.4** Claycliffe Business Park had permission granted in 1989 for industrial development, but in 2006 the application site was granted permission for B1, B2, B8 and trade sales.
- 1.5** The Pet Store began operating in 2008 from the Business Park, and has been in retail use since it began trading. This application is for a Certificate of Lawfulness to establish the existing use of Unit 21 at Claycliffe Business Park as a retail unit.
- 1.6** This report has been structured to provide an introduction to the site and discuss its planning history and sets out the available evidence to support that on the balance of probability, a certificate of lawfulness should be granted. This statement will be submitted alongside the evidence available to the applicant that demonstrates the continuous use of the building for a period in excess of 10 years.
- 1.7** Also submitted to accompany the report are the following:
- Application form;
 - Site Location Plan;

- Evidential Documents (Appendix A, B, C and D).

2 SITE DESCRIPTION AND PLANNING HISTORY

Site Location

- 2.1** Claycliffe Business Park is an established Business Park comprising of a mix of commercial, industrial, leisure and retail units.
- 2.2** The application site relates to 'The Pet Store' which is situated at Unit 21 within the Business Park. The unit has a footprint of approximately 250m² and the building features a mezzanine floor. There are 14 customer parking spaces at the front of the unit. The building features a roller shutter door and additional parking at the front of the unit for employees.

Relevant Planning History

- B/89/0759/DT - Outline for industrial development - (Approved 1989).
- 2005/2025 - Erection of B1, B2, B8 and trade sales industrial units and warehouses (Approved 2006) Claycliffe Industrial Estate Phase 2 and 3 Barugh Green Road Barnsley



Figure 1 - Application Site (edged in red)



Figure 2 - The Pet Store

3 PLANNING LEGISLATION

Town and Country Planning Act 1990 Section 191 & 171

- 3.1** Section 191 determines whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes. Section 191 states:

(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,

They may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) The time for taking enforcement action in respect of the failure has then expired; and

(b) It does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a) the time for applying for an order under section 171BA (1) (a “planning enforcement order”) in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

3.2 Section 171 states:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) The service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) Taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

4 KEY PLANNING ISSUES

- 4.1** As this is an application for a Lawful Development Certificate (LDC) it is not a matter of considering the planning merits of the scheme, but it is a legal determination based on the facts and the available evidence to establish whether the stated activity is established and lawful by the passage of the relevant period of time and therefore beyond the scope of enforcement action.
- 4.2** The test of the evidence is “on the balance of probabilities” rather than the stricter criminal test of “beyond reasonable doubt”.
- 4.3** The main considerations for this application are therefore to establish:
1. That the unit is and continues to be used for the sale of goods to the general public in small quantities for their use or consumption rather than for resale (definition of retail – Oxford English Dictionary).
 2. That the building has been continuously for that purpose for at least 10 years.
- 4.4** The unit has been and continues to be used as a retail unit which was formally established in 2008. The use of the building for retail purposes is in keeping with the Oxford Dictionary definition of retail which states “the sale of goods to the public in relatively small quantities for use or consumption rather than for resale.”
- 4.5** The Pet Store is a retail unit that meets this definition. The Applicant receives stock from local suppliers and stock is supplied as needed, and all stock is displayed on the shop floor. This is how the company has operated since opening and it is how the other stores operate in Wakefield and Barnsley.
- 4.6** The premise operates as a retail unit on both floors. There is a small area on the left-hand side as you walk into the unit that is used as an office/ staff area. The remainder of the unit is used for retail sales. The counter and the point of sale is at the front of the building closest to the roller shutter doors.
- 4.7** The products are separated into different categories of animal, with the ground floor generally selling animal food, and the mezzanine floor selling bedding, leashes, collars and toys.

- 4.8** The photographs taken inside the unit illustrate the items the Pet Store is selling. As a retailer, all items are individually priced and comprise of relatively small items that are used/ consumed by the general public. Items include a variety of animal supplies and pet accessories such as: food, treats, toys, collars, leashes, cat litter, cages and beds.
- 4.9** Often, it is the case that members of the public will bring their pets to the store to try equipment on, which is actively encouraged by the owner, showing that there is clearly an emphasis on providing a good level of service to all members of the public.
- 4.10** This is therefore materially different from 'a trade counter' which can be defined as the sale of goods at a reduced price, to registered tradesmen and businesses, including the storage of goods.
- 4.11** This is the largest premises operated by the Pet Store. It is well established and has been since 2008 which demonstrates that it has a good reputation in Barnsley. Stock levels are high at this store to meet demand from visiting members of the public. None of the stock is stored or shared between the other units in Barnsley and Wakefield.



Figure 3 - Photographs taken from inside the unit

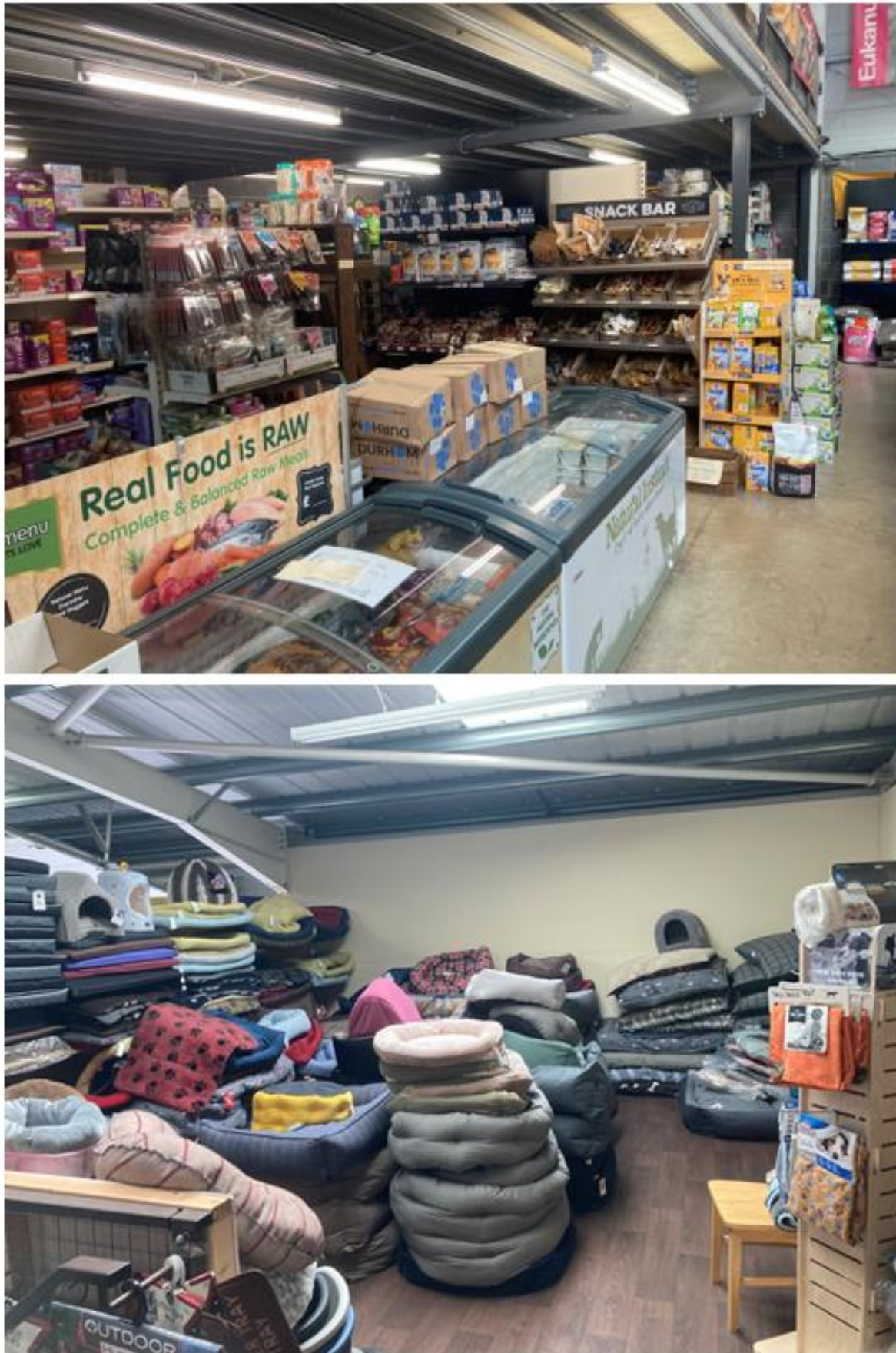


Figure 4 - Photographs taken from inside the unit

4.12 Figures 5 and 6 below show that the building has been in use continuously for a period of over 10 years. The photo's are taken from Google Maps, figure 5 shows the Pet Store in 2011, and figure 6 shows the Pet Store in 2020. There are further images of this building taken between these dates.

4.13 Further evidence has been submitted which shows the store being opened in 2008, along with an invoice for the signage which was displayed in 2008. The store is still in use today, and continues to operate as a retail unit.



Figure 5 - Pet Store in 2011 (taken from Google Maps)



Figure 6 - Pet Store in 2020 (taken from Google Maps)

Evidential Documents

- 4.14** The applicant has presented their rates record since 2008 and up to 2020, together with utility bills and energy rates which show that the unit has been continuously used by the Pet Store for over 10 years. Rates records are included as part of Appendix A.
- 4.15** In 2008 the Council granted The Pet Store a licence to sell pets and small animals and has been provided as part of the evidential documents (included as part of Appendix B), which is often associated with a retail pet store. The Pet Store no longer operates as a pet supplier. Other records include receipts from goods being purchased for the store, including CCTV and a cash register which are common features for a retail unit.
- 4.16** Invoices from stock purchases has also been provided (as part of Appendix C), which shows the Pet Store's long terms suppliers (such as Pedigree and Cobbydog), and also shows the type and quantity of stock that has been purchased since the store has been operating.
- 4.17** Photographs have been provided by the applicant which can be digitally dated from 2007, including a newspaper article from the Barnsley Chronicle (see Appendix D) which further supports a clear illustration of the company's continued retail use, providing a clear timeline of when the store was opened up until the present day.
- 4.18** It is acknowledged that the rates record indicates the building being used as a warehouse premises, this is not the case. Other evidence shows that the building has not been used in that way, but what it does show is continuous occupation by the Pet Store.

5 Conclusion

- 5.1** National Planning Practice Guidance advice is that in the case of applications for a certificate of lawfulness for an existing use, if a local planning authority has no evidence itself, nor any 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 5.2** In summary, the application confirms that the current retail (Class E(a)) use began more than 10 years ago from the date of this application, is lawful.
- 5.3** The enclosed documents demonstrate that the site has been operated as a retail unit for more than 10 years continuously. No evidence suggests that the site's existing use has been abandoned. Additionally, the supporting documents demonstrate that there has been a material change to the nature of the use of the premises.
- 5.4** It is considered that this statement and the evidence provided alongside it demonstrates that, on the balance of probability, the unit has been used for a period of time greater than ten years, and is therefore worthy of being granted a certificate of a lawfulness for an existing use.
- 5.5** Therefore, this is an application for a Certificate of Lawfulness of an Existing Use or Development (CLEUD) submitted under section 191 of the Town and County Planning act on the grounds that the use of the building is lawful.

6 Appendices

6.1 Appendix A – Rates

6.2 Appendix B – Pet Store Licence

6.3 Appendix C – Invoices from stock

6.4 Appendix D – Barnsley Chronicle Article



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