

## **SITE AND CONTEXT**

The application site comprises a small commercial unit, over 2 floors, located on an industrial estate at Milland Road. Surrounding land uses include a mix of industrial and commercial businesses including Sandvik Osprey, a major manufacturing company that occupies the wider factory and Waterside House in which the unit is located, as well as a neighbouring café and dog grooming business.

## **DESCRIPTION OF DEVELOPMENT**

This is an application for a certificate of lawful development (proposed) to confirm that the proposed use of the premises as a barber shop (Use Class A1) does not require express planning permission.

The supporting evidence comprises a Supporting Statement dated June 2026 and a number of newspaper cuttings advertising the previous occupier's gas/electric fireplace showroom and surrounds.

## **PUBLICITY**

Neighbouring properties were consulted on 11 June 2026. At the time of writing, no representations have been received to the application.

## **CONSULTATIONS**

Ward Councillors – no comments received

Neath Town Council – no comments received

Business Rates – property records provided. Valley Services occupied the property from 01.04.1990 to 08.01.2025. L Phillips Properties Ltd from 08.01.2025 to 21.03.2025 and Joshua Johns from 21.03.2025 to date.

## **PLANNING HISTORY**

From an examination of records, the application site/property has no relevant planning history.

## **POLICY CONTEXT**

Planning Policies are not relevant to certificate of lawfulness applications. The statutory framework for lawful development certificates is set out in Sections 191-193 of the Town and Country Planning Act 1990 ('T&CPA'): Section 192 as amended by section 10 of the Planning and Compensation Act 1991 and the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

Section 192(1) allows local planning authorities to grant a lawful development certificate for a proposed use or development *if a person wishes to ascertain whether:*

- (a) any proposed use of buildings or other land would be lawful; or*
- (b) any operations proposed to be carried out in, on, over or under land would be lawful.*

Following the grant of a certificate under S.192, the lawfulness of any proposed use or operations for which a certificate is in force under S.192 shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

### **Section 55 of the T&CPA**

Section 55(1) of the T&CPA, as amended by the Planning (Wales) Act 2015, defines 'development' as:

*The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. [author's emphasis]*

Section 55(2) specifically excludes the following categories of operations and uses from the meaning of 'development':

*(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—*

*(i) affect only the interior of the building, or*

*(ii) do not materially affect the external appearance of the building, and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;*

*(b) the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road [ but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment];*

*(c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;*

*(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;*

*(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;*

*(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.*

*(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.*

This application seeks a Lawful Development Certificate under Section 192 of the 1990 Act which seeks to certify the lawfulness of proposed operations on or use of the land. The determination of the application is on legal grounds only, accordingly, any

views 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.

Accordingly, this report concentrates solely on whether, based on the facts of the case, the specified matter is or would be lawful.

### **APPRAISAL OF CASE:**

#### *The relevant test(s) of the submitted evidence:*

In matters which raise 'legal issues' (for example, applications submitted under Section 191 or 192 of the Town & Country Planning Act 1990, as amended), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is '*the balance of probability*', which is less of a burden than the usual criminal standard of proof to be demonstrated '*beyond all reasonable doubt*'. Accordingly, the Local Planning Authority should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof. Moreover, the Courts have held that if the LPA have no evidence of their 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate '*on the balance of probability*'. The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

The Town and Country Planning (Use Classes) Order 1987 (as amended) plays a central role in the planning system by categorising land and buildings into various 'use classes' for the purposes of determining whether a change of use constitutes 'development' for the purposes of the T&CPA and specifically Section 55(2)(f). The submitted application contends that the proposed barbers shop falls within the same use class as the existing use therefore does not constitute development. The red-line application site is for the premises as a whole, over both ground and upper floors.

According to available business rates records, the property was last occupied as showroom as part of a gas central heating and plumbing business. The company (Valley Services) is still trading as a fully mobile operation and the proprietor of the business has been contacted by the Council's planning officer to seek information about his previous occupation and use of the site/property prior to it being sold to the applicant in January 2025.

The proprietor has confirmed that the premises was used as an office and store for his central heating and plumbing business employing 3 admin staff and around 20 plumbers at the peak of the business. He confirmed that his business was a major contractor for a number of clients including Neath Port Talbot Council. The proprietor has confirmed that when he diversified the business in circa.1995 he converted the majority of the ground floor to a showroom alongside the main office and store and that he had customers who were visiting members of the public. This information appears to be consistent with the photographs and newspaper cuttings of the fire/fireplace showroom that have been submitted by the applicant in support of the

current application. The proprietor also confirmed that he sold the property in January 2025 as he is now semi-retired and able to operate what's left of the business as a mobile concern.

In light of the above, the concept of the 'planning unit' is considered to be fundamental to the consideration and determination of the current application for a lawful development certificate. The property has clearly been used as a 'showroom' but it is necessary to consider whether or not this amounts to a retail use of the premises as a whole if a proposed use as a barbers shop (Use Class A1) is to be granted a lawful development certificate.

The 'planning unit' concept is fundamental to assessing whether or not there has been a material change of use requiring planning permission with a leading case law of *Burdle v SSE* [1972] often quoted by appeal inspectors in this regard.

*Burdle* establishes that the planning unit is normally the unit of occupation, unless a smaller area can be identified, which as a matter of fact and degree, is physically separate and distinct and occupied for different and unrelated purposes.

There are broadly three separate categories for planning units comprising as follows:

- a) single unit of occupation with a single primary use with ancillary and incidental activities;
- b) a single unit of occupation with two or more separate primary uses that are not incidental to one another (mixed use);
- c) a unit of occupation where two or more physically separate areas which are occupied for different and unrelated purposes. Each area in scenario c) forms a separate planning unit.

On the balance of probability and based on the information provided and other available evidence, it is considered that the lawful use of the premises is likely to be an administrative base for a boiler/central heating and plumbing installation business which includes an element of retail in the form of a showroom of fires/surrounds available to visiting members of the public. This does not amount to an A1 retail use of the premises as a whole. The current application has a red-line around the whole site, over 2 floors, and seeks a lawful development certificate for a proposed barbers shop use on the basis this does not constitute development under Section 55. However the available evidence suggests that the planning unit as a whole comprised a single unit of occupation with no single primary use as the premises were used for a combination of offices, storage and distribution and sales.

Accordingly the proposed use of the premises as a barber shop (Use Class A1) constitutes development that would require express planning permission such that a certificate of lawful development under Section 192 cannot be issued for the application as submitted.

**Recommendation:**

To refuse to issue a Certificate of Lawful Development for the proposal.

**Reason:**

Based on the information provided with the application and having regard to other available evidence, on the balance of probability, the Local Planning Authority is not satisfied that the application site, as outlined in red, has a lawful A1 use. Accordingly a proposed use of the premises as a barber shop would constitute a material change of use requiring express planning permission by virtue of Section 55 of the Town and Country Planning Act 1990 (as amended).