

SITE AND CONTEXT

The application site comprises an existing B8 industrial unit located at 12 Seaway Parade Industrial Estate within Baglan Energy Park. The unit was formerly a tool hire business but is now currently used for the storage and sale of bi-fold door components with a trade counter at the rear of the unit.

DESCRIPTION OF DEVELOPMENT

This is an application for a Certificate of Lawfulness for the proposed use of no more than 27% of the existing industrial unit as an ancillary showroom. The showroom would function as a visual aid for clients to view product samples and help them finalise selections before they are supplied and installed on the clients' site.

PUBLICITY

None

CONSULTATIONS

Ward Members – No response received

PLANNING HISTORY

The application site has the following relevant planning history: -

T1974/0347 - SPECULATIVE FACTORY UNITS FOR LIGHT INDUSTRY –
Approved 18/3/74

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.

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 current use of the application site is for the storage and sale of bi-fold doors which falls within the B8 storage use class. This follows a former use as a tool hire business also falling within the B8 storage use class.

The existing unit has a floorspace area of 498m² including a mezzanine office. It is proposed to use 132m² of this space (approximately 26.5%) of the unit space as a showroom. The space would function as a visual aid for clients to view product samples and help them finalise selections before they are supplied and installed on the clients' site. It is noted that the customers would not be able to purchase and walk out with products from the showroom and that there would be no point-of-sale infrastructure, cash desks or over-the-counter retail activity. Furthermore there are no proposed external alterations to the building.

Therefore the proposal is ancillary to the existing B8 use and does not comprise 'development' within the Sections 55(2)(a) and 55(2)(f) definitions.

On the balance of probability and based on the information provided, it is considered that a Certificate of Lawful Development can be issued for the development as described.

Conclusion:

It is considered that the application has demonstrated that the proposal would not require express planning permission such that a certificate of lawfulness under Section 192 can be issued.

Recommendation:

To issue a Certificate of Lawful Development for the proposal.

Reason:

On the balance of probability, the Local Planning Authority is satisfied that the proposed operations as described affect only the interior of a building within the same use class as the building and therefore does not constitute development by virtue of Section 55(2) of the Town and Country Planning Act 1990 (as amended).