

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO	CASE OFFICER	DATE
24/01049/CPL	Nick Brookman	10 January 2025

EXTENSION OF TIME

24 January 2025

Address: Broadlands Unit B9, Heywood Distribution Park, Pilsworth Road, Heywood, OL10 2TS

Proposal: Application for a Certificate of Lawfulness Under Section 192 of the Town and Country Planning Act 1990 for the proposed refurbishment of the existing unit comprising partial demolition of the unit, sub-division to 3 units, re-provision of the front elevation wall, creation of a canopy, introduction of new windows and doors, new cladding, repair of retained elevations, revisions to car parking and service yard and dismantling of existing water tank.

PUBLICITY	Weekly list expired?	N/A	Site notice expired?	N/A
	Neighbour letters expired?	N/A	Press Notice expired?	N/A

DELEGATION	Significant departure from local plan?	N/A	Contrary to national policy?	N/A
	Applicant a Council Member or officer?	N/A	Contrary to previous decision?	N/A
	Major with 10 or more objections and recommending approval?	N/A	Called in or Planning Panel objection?	N/A

COMMENTS	Planning Panel comments received?	N/A
	Neighbour comments received?	N/A

EIA	Screening opinion completed and saved to Onbase?	N/A
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CONDITIONS	Pre-commencement conditions proposed?	N/A
	Pre-commencement conditions agreed (or notification period expired)?	N/A

RECOMMENDATION	APPROVE
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CHECKED AND SIGNED OFF BY: LA

DATE: 21.01.25

SITE AND SURROUNDINGS

The application site is previously developed land with an existing industrial unit sited upon it. The application site is located in the defined Urban Area under Policy G/D/1 and the site, along with the surrounding land to the east, south and west designated as a 'Primary Employment Zone' in Rochdale Borough Council's UDP Proposals Map (Policy EC/2). The East Lancashire Railway line borders the north of the site.

The Unit is of typical commercial / industrial design, featuring a series of low pitch gables, and is constructed of steel frame and grey cladding. The floor plate of the Unit to the rear steps down in an eastern direction following the curvature of the adjacent train line. Car parking is provided in the eastern section of the Site and a service yard is located to the front of the Unit.

The application site is located on the north west corner of Heywood Distribution Park. Access to the site is provided via Pilsworth Road and the subsequent internal industrial estate road. The Site is circa 3 km from Heywood Town Centre and is situated approximately 6km from Bury Town Centre.

The east, south and west of the Site is surrounded by other employment units that form part of the larger Heywood Distribution Park. The Distribution Park is characterised by a range of typical industrial and storage units and associated hard and soft landscaping.

DESCRIPTION OF PROPOSAL

A certificate of lawfulness is sought Under Section 192 of the Town and Country Planning Act 1990 for the proposed refurbishment of the existing unit comprising partial demolition of the unit, sub-division of the unit into 3 new units, re-provision of the front elevation wall, creation of a canopy, introduction of new windows and doors, new cladding, repair of retained elevations, revisions to car parking and service yard and dismantling of an existing water tank.

The application initially sought the sub-division of the existing unit into 4 units and the additional of new hardstanding but on initial review of this proposal, the proposed new hardstanding area out unit D extended beyond the existing fence line and therefore beyond the curtilage of the industrial unit. This proposal would not have constituted permitted development by virtue of Class J of Part 7 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Accordingly, the plans were amended and now the applications seeks the sub-division of the existing unit into 3 units, not 4 and the previous proposed hardstanding has been removed from the scheme.

In summary, the works comprise:

- ❑ Partial demolition of the unit to facilitate the introduction of a larger service yard to the front of the unit;
- ❑ Re-provision of the front elevation wall and retained area of roof to form a new canopy over the docking area;
- ❑ Subdivision of site into 3 no units;
- ❑ Introduction of new windows and doors to facilitate sub-division of the unit for form 3 no units;
- ❑ New cladding to the front elevation of the unit and recoat of roof coverings;
- ❑ Repair of retained elevations;
- ❑ Minor revisions to car parking and servicing including additional parking to the front of newly created Units A, B and C;

- ② Dismantling of the water tank to the west of the Unit.

RELEVANT PLANNING LEGISLATION

The Town and Country Planning Act (1990) - S.192

- (1) If any person wishes to ascertain whether:
- (a) any proposed use of buildings or other land; or
 - (b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
- (2) 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 would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (3) A certificate under this section shall:
- (a) specify the land to which it relates;
 - (b) describe the use or operations 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 or operations to be lawful; and
 - (d) specify the date of the application for the certificate.
- (4) The lawfulness of any use or operations for which a certificate is in force under this section 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

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Clarification is sought through this application that the above mentioned works constitute permitted development under Schedule 2, Part 7 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). The relevant classes of this Part are considered to be Class H (the erection, extension or alteration of an industrial building or a warehouse) and Class J (hard surfaces for industrial and warehouse premises).

Burden of Proof

The applicant is responsible for providing sufficient information to support an application. In the case of applications for 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 (PPG Paragraph: 006 Reference ID: 17c-006-20140306)

RELEVANT HISTORY:

None relevant

REPRESENTATIONS

In accordance with the Council's code for publicity for this type of application, no letters of notification have been issued.

ASSESSMENT

The application is considered across two different sections of the legislation.

Part 7 Class H of the GPDO

Permitted Development

H. The erection, extension or alteration of an industrial building or a warehouse.

Development not permitted:

H.1 Development is not permitted by Class H if:

(a) the gross floor space of any new building erected would exceed:

- i. for a building on article 2(3) land or on a site of special scientific interest, 100 square metres;
- ii. in any other case, would exceed 200 square metres;

COMPLIES: The proposals would not extend the building.

(b) the gross floor space of the original building would be exceeded by more than:

- i. in respect of an original building or a development on article 2(3) land, 10% or 500 square metres (whichever is lesser);
- ii. in respect of an original building or a development on a site of special scientific interest, 25% or 1,000 square metres (whichever is the lesser);
- iii. in any other case, 50% or 1,000 square metres (whichever is the lesser);

COMPLIES: The proposals would not result in an overall increase in floor space.

(c) the height of any part of the new building erected would exceed:

- i. if within 10 metres of a boundary of the curtilage of the premises, 5 metres;
- ii. in all other cases, the height of the highest building within the curtilage of the premises or 15 metres, whichever is lower;

COMPLIES: The proposals do not increase or alter the height of the building and they are in any case, in excess of 5 metres away of the curtilage of the unit.

(d) the height of the building as extended or altered would exceed:

- i. if within 10 metres of a boundary of the curtilage of the premises, 5 metres;
- ii. in all other cases, the height of the building being extended or altered;

COMPLIES: The proposals do not increase or alter the height of the building and they are in any case, in excess of 5 metres away of the curtilage of the unit.

- (e) any part of the development would be within 5 metres of any boundary of the curtilage of the premises;

COMPLIES: The proposed area of works lies in excess of 5 metres of the curtilage of the unit.

- (f) the development would lead to a reduction in the space available for the parking or turning of vehicles; or

COMPLIES: The partial demolition of the unit will result in an increased area of space available for the parking and turning of vehicles. As such the overall amount of space would be increased and not reduced.

- (g) the development would be within the curtilage of a listed building.

COMPLIES: The proposal is not located within the curtilage of a listed building.

Conditions

H.2 Development is permitted by Class H subject to the following conditions:

- (a) the development is within the curtilage of an existing industrial building or warehouse;
- (b) any building as erected, extended or altered is only to be used:
 - (i) in the case of an industrial building, for the carrying out of an industrial process for the purposes of the undertaking, for research and development of products or processes, or the provision of employee facilities ancillary to the undertaking;
 - (ii) in the case of a warehouse, for storage or distribution for the purposes of the undertaking or the provision of employee facilities ancillary to the undertaking;
- (c) no building as erected, extended or altered is used to provide employee facilities:
 - (i) between 7.00pm and 6.30am, for employees other than those present at the premises of the undertaking for the purpose of their employment; or
 - (ii) at all, if a quantity of a dangerous substance is present at the premises of the undertaking in a quantity equal to or exceeding the quantity listed in the entry for that substance in Parts 2 or 3 of Schedule 1 to the Control of Major Accident Hazards Regulations 199987;
- (d) any new building erected is, in the case of article 2(3) land, constructed using materials which have a similar external appearance to those used for the existing industrial building or warehouse; and

- (e) any extension or alteration is, in the case of article 2(3) land, constructed using materials which have a similar external appearance to those used for the building being extended or altered

The application site is an industrial building and the proposed works are within the curtilage of the industrial building. The end use of the development would remain in industrial use and the application site is not located on Article 2(3).

The application submission and associated accompanying plans and documents confirm that all works will be in keeping with the existing appearance of the unit and wider industrial park.

Part 7 Class J of the GPDO - Hard surfaces for industrial and warehouse premises.

Permitted Development

J. Development consisting of:

- (a) the provision of a hard surface within the curtilage of an industrial building or warehouse to be used for the purpose of the undertaking concerned; or
- (b) the replacement in whole or in part of such a surface.

Development not permitted:

J.1 Development is not permitted by Class J if the development would be within the curtilage of a listed building.

Conditions

J.2 Development is permitted by Class J subject to the following conditions:

- (a) where there is a risk of groundwater contamination the hard surface must not be made of porous materials; and
- (b) in all other cases, either:
 - i. the hard surface is made of porous materials, or
 - ii. provision is made to direct run-off from the hard surface to a permeable or porous area or surface within the curtilage of the industrial building or warehouse.

The submitted proposed plans demonstrate that the existing yard area fronting the units would be enlarged through the introduction of new parking spaces beneath the proposed canopy on the front elevation which is the location where the partial demolition is to take place. Accordingly, the proposed works are evidently within the curtilage of the existing industrial building.

The new hard surfacing would utilise the existing service yards surface water system and therefore Class J conditions are satisfied.

The proposed hardstanding works meet the requirements of Class J of Part 7 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Subdivision of the Units

The subdivision of the unit into three smaller units, would be considered under Section 55 of the Town and Country Planning Act.

S.55(1) of the Town and Country Planning Act 1990 (*The 1990 Act*) sets out:

Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means 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.

The following operations or uses of land shall not be taken for the purposes of this Act to involve the development of the land:

- 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.*

In respect of changes of use, Article 3(1) of the Town and Country Planning (Use Classes) Order 1987 (*The Use Classes Order*) sets out "Where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land."

In assessing this application, it is necessary to understand the existing lawful use of the unit proposed to change use and the use class of the proposed use. Where the existing and proposed use do not fall within the same use class, it is necessary to consider whether the proposed use would have a materially different impact on the environment and local amenities.

For the avoidance of doubt, the planning merits of the matters applied for are not for consideration under this application. This decision is based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

In light of the planning history at the site, the LPA is content to consider the existing lawful use of the site as a B2 Industrial unit. The proposed use would remain the same. To facilitate the subdivision of the unit, all works are internally proposed within the existing unit. Internal works are not considered development under the definition set out in Section 55 of the 1990 Act, as whilst they are building works, they are alterations that affect the internal building only.

There is no evidence to suggest that permitted development rights relating to the application site have been removed and therefore, the subdivision of the unit into 3 smaller units would be permitted development.

Dismantling / Demolition of Water Tank

The LPA are satisfied that the removal of the water tank to the west of the application site is not considered to constitute development that would require planning permission.

Recommendation:

Approve

The proposed development constitutes permitted development and meets the requirements of Schedule 2, Part 7, Classes H and J of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Notes for applicant:

For the avoidance of doubt, the decision relates to the following submitted drawings:-

- ② Location Plan Drawing No BCC-HDP-B9-D09-001
- ② Existing Block Plan Drawing No BCC-HDP-B9-D01-002
- ② Existing Topographical Survey Drawing No BCC-HDP-B9-D01-001
- ② Existing Elevations and Sections Drawing No BCC-HDP-B9-B01-001
- ② Existing Floor Plan Drawing No BCC-HDP-B9-A01-001
- ② Proposed Block Plan Drawing No BCC-HDP-B9-D09-002 Rev A
- ② Proposed Elevations and Sections Drawing No BCC-HDP-B9-B03-001 Rev A
- ② Proposed Floor Plans – BCC-HDP-B9-A03-001 Rev A

Report Author Nick Brookman