

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO	CASE OFFICER	DATE
25/00227/CPL	Bob Melling	15 April 2025

EXTENSION OF TIME

N/A

Address: Unit 5, Broadfield Road Industrial Estate, Heywood, OL10 3AJ

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 sub-division to 5 units and re-provision of the front elevation wall with four new openings including roller shutters.

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	REFUSE
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CHECKED AND SIGNED OFF BY: TH

DATE: 24/04/2025

SITE AND SURROUNDINGS

The application relates to Unit 5 within the Broadfield Industrial Estate in Heywood. There are two rows of terraced dwellings located immediately adjacent to the south and west of the site with further employment uses located to the north and east. The existing use of the unit is described as 'garage/workshop' and is considered to fall

under Use Class E(iii) which covers any industrial process which can be carried out in any residential area without causing detriment to the amenity of the area. The unit is of a typical industrial design featuring a series of low pitched gables with corrugated roofing sheets.

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 sub-division to 5 units and re-provision of the front elevation wall with four new openings including roller shutters.

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:

90/D24955 Single Storey Extension To Engineering Workshop
Refused (May1990)

89/D24310 Single Storey Extension To Engineering Workshop
Refused (February 1990)

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.

(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.

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

DOES NOT COMPLY: The proposed door serving the new Unit 5 is located within 5 meters of the boundary of the curtilage of the premises.

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

COMPLIES: The proposals do not result in a loss of parking or turning space.

(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

- (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 estate.

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 Use Class E(iii) as the unit is located in close proximity to residential properties and involves the carrying out of industrial processes. The proposed use would remain the same. To facilitate the subdivision of the unit, internal walls are proposed within the unit. Internal walls 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.

However, as a result of the failure to meet all of the requirements of Part 7 Class H, a certificate of lawfulness cannot be granted.

Recommendation:

REFUSE

The proposed development would fail to comply with criterion (e) of Schedule 2, Part 7, Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Notes for applicant:

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

- ☐ Existing Plans. Dwg no. RAD/3265/25/1
- ☐ Proposed Plans. Dwg no. RAD/3265/25/2
- ☐ Site, Block and Location Plans. Dwg no. RAD/3265/25/3

Report Author Bob Melling