

APPLICATION NUMBER: 23/00265/CPL

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/00265/CPL	Rosalind Gralton	17 May 2023

Address: Electro Appliances Services 1 Summer Street Rochdale OL16 1SY

Proposal: Application for a certificate of lawfulness for the proposed sub-division for existing general industrial unit (B2 use) into 4 separate B2 units including formation of new door opening on front elevation

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: LA

DATE: 22.05.23

SITE AND SURROUNDINGS

The application site relates to a single storey 19th century mill, currently in B2 use. The property is constructed using brick with a tin roof. Barbed wire is sited atop the eaves of the building. Access is provided via Hill Street.

The site is located within the defined urban area, a mixed employment zone, and the inner Rochdale physical regeneration area. The building is not listed or located adjacent to a listed building, nor is the site within or adjacent to a conservation area. The site is located approximately 90m east of the Rochdale Town Centre boundary.

PROPOSAL

A lawful development certificate is sought for the proposed sub-division for existing general industrial unit (B2 use) into 4 separate B2 units including formation of new door opening on the front elevation.

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)

Part 7 – Non-domestic extensions, alterations etc

Amended by:

The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2017

The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021

The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021

The Town and Country Planning Act (1990) - S.55

- (1) 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.
- (1A) For the purposes of this Act “ building operations ” includes—
 - (a)demolition of buildings;
 - (b)rebuilding;
 - (c)structural alterations of or additions to buildings; and
 - (d)other operations normally undertaken by a person carrying on business as a builder.
- (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve 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, 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;

National Guidance

National Planning Practice Guidance (NPPG)

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 SITE HISTORY

82/D14578 – Section 53 Determination Use of Premises for the repair and storage of domestic electrical appliances – Grant 06/12/1982

82/D14727 – Change of use of land to car park and formation of new vehicular access and entrance to offices – Grant subject to conditions 01/02/1983

90/D25350 – Change of use of part of workshop/store to retail – Grant subject to conditions 14/02/1991

CONSULTATION RESPONSES

Not applicable.

REPRESENTATIONS

In accordance with the Council's Code of Publicity for Planning Applications, this application has not been publicised.

ANALYSIS

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

Firstly, the proposal seeks a lawful development certificate for the erection of an external door to the building. As such, this is considered under Part 7 Class H of the GPDO.

Part 7 - Class 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. The building would not exceed 200 square metres as it was on 14TH March 2023.

(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 exceed floorspace beyond 50% or 1000 square metres.

- (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 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 would not alter or reduce parking or vehicle turning arrangements.

- (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
 - (a) have a similar external appearance to those used for the building being extended or altered.

Secondly, the subdivision of the unit into four units, would be considered under Section 55 of the Town and Country Planning Act, given all works to complete this is internal.

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

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 do not fall to be considered. The decision will be 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 main 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, the applicant has failed to provide accurate plans to which this certificate of lawfulness relates to, by reason of an incorrect location plan and site plan. As such, cumulatively, as a result of insufficient information being submitted, and failure to meet the requirements of Part 7 Class H, a certificate of lawfulness cannot be granted.

RECOMMENDATION

REFUSE

The proposal would fall exceed the parameters of Schedule 2, Part 7, Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015. Additionally, the applicant has failed to provide accurate plans to which this certificate of lawfulness relates, by reason of an incorrect location plan and site plan. For both these reasons, a certificate of lawfulness cannot be granted.

Notes for applicant:

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

Location Plan

Existing Elevations and Site Plan

Proposed Elevation and Site Plan

Proposed Ground Floor Plan

Proposed First Floor Plan

