



## PLANNING STATEMENT

**Client:** Delivita Ltd., c/o Mr. G. Formisano, 52 Heator Lane, Upper Cumberworth, Huddersfield HD8 8XJ

**Application:** Retrospective application for erection of garage outbuilding with mixed use as domestic garage/annex (ground floor) and B1 offices (first floor) with ancillary storage

**Site Location:** Land at 52 Heator Lane, 52 Heator Lane, Upper Cumberworth, Huddersfield HD8 8XJ

### 1.0 INTRODUCTION

- 1.1 This is a retrospective application following enquiries and investigation by the Council's Planning Enforcement Section (ref: COMP/18/0207). Planning Enforcement has, following investigation, confirmed that its principal concerns relate to the height of the building compared with that granted planning permission under 2016/90090, and part of the premises on the first floor level is being used as a business premises.
- 1.2 The development pursuant to 2016/90090 did commence, which is clear from the extensive parking apron and more particularly the demolition of the previous outbuilding. However, the current building is, as built and completed, is 1.3m higher than that which was granted planning permission and contains a loft-/dormer-type first floor level. For completeness, the applicant will also formally apply for B1 office business use with ancillary storage and distribution for the avoidance of any doubt and in order to fully regularise the position.
- 1.3 Accordingly, notwithstanding responses provided to Planning Enforcement, this is a retrospective application for a domestic garage/annex outbuilding (ground floor) with B1 offices (first floor) with ancillary storage and distribution.
- 1.4 For information and context, the building as built compared with what was approved under 2016/90090 is as follows:

| Building:- | As Approved<br>2016/90090             | As Built                                                                                                                                       | Difference      |
|------------|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Height     | 3.8m (NB. from original ground level) | 5.8m from new ground level (NB. but only a maximum of 5.1m against previous level, such measurement has been agreed with Planning Enforcement) | 1.2 - 1.3m max. |
| Width      | 6.9m                                  | 7.27m                                                                                                                                          | 0.37m           |
| Length     | 10.30m                                | 10.36m                                                                                                                                         | 0.06m           |

Noel Scanlon Consultancy Ltd ('NSCL')

NSCL is registered in England with company registration number: 10092591

Company registered office: Hollinwood Business Centre, Albert Street, Oldham OL8 3QL and

Correspondence Address: 3 Dryden Way, Lindley, Huddersfield, West Yorkshire HD3 3YF

VAT Registration Number: 237709683



- 1.5 The applicant and the landowners are contrite and explanation as to why they thought the building could be built higher is included at 3.3 – 3.5, below. This application is a genuine and sincere reaching out to the Council to regularise matters, following co-operation and dialogue with Planning Enforcement.

## **2.0 RELEVANT PLANNING HISTORY**

- 2.1 The following is the relevant history concerning the site garage/outbuilding during the current landowners' ownership of the land:

- 2016/90090 - Erection of detached garage with office, demolition of existing building and formation of new access – Approved March 2016.
- 2014/92119 – Certificate of lawfulness for proposed erection of garage and office – Refused September 2014
- 2014/90615 - Erection of detached garage and garden store, demolition of existing outbuilding and formation of new access – Refused April 2014
- 2011/93358 - Certificate of Lawful development for proposed single storey rear extension – Approved March 2012  
(NB. This permission relates to the rear (south elevation) of the main house and not the garage/outbuilding to the north)

- 2.2 There is a further refused application **prior to the current landowners' ownership** of the land:

- 2004/91089 – Outline application for erection of detached two-storey dwelling - Refused April 2004

## **3.0 THE APPLICANT AND THE BUILDING**

- 3.1 The Applicant is briefly described for context in relation to this application. The applicant is Delivita Ltd., a limited company which is owned and directed by one of the landowners, Mr. Formisano, who lives in the main dwellinghouse at 52 Heator Lane with his family.

- 3.2 Delivita Ltd. manufactures and sells high-quality portable wood-fired barbecue-style ovens, with associated paraphernalia. See: [www.delivita.co.uk](http://www.delivita.co.uk) for further information. The company was incorporated in December 2015. At this time the company was merely a fledgling business. However, it is in its own way a success story, insofar as it has grown more quickly than expected. It has attracted media attention due to the unique and high-quality nature of the product, including being filmed as part of the 'Countryfile' programme. The company has also previously been invited to pitch for further investment on the popular 'Dragons Den' programme.

- 3.3 Through sales, the company has expanded more swiftly than was expected. The administrative side of the business had, like very many small businesses, operated substantially from a home office. The home office was incorporated in the original permission in 2016.



On commencing the planning permission 2016/90090, following demolition of the old shed and outbuilding, for technical reasons, basically amounting to removing problematic foundations of the old outbuilding/large shed (including the removal of asbestos), the landowners had to go lower in level than anticipated in getting rid of the original outbuildings. As a result, the starting level at which the garage building began was lower than envisaged.

- 3.4 Naively, but sincerely and without malice or any discourtesy intended, the landowners believed that it would be acceptable to build slightly higher, as a result having to go lower at ground level. At this point, the business was gaining traction and accordingly, as well as mixed with domestic uses, given that the building was going to be built slightly higher, incorporated a dormer/loft-space style first floor, part of which it was intended would incorporate the administrative office of the Delivita business.
- 3.5 The landowners apparently checked matters with Council Tax and Building Control at the Council. Council tax did confirm that business rates would not apply and information provided that no change of use to a business use was required (information which must have come from, either directly or indirectly, planning colleagues at the Council), because the garage building was predominantly a domestic garage ancillary to the main dwellinghouse. These checks were carried out as a result of a successful application to the *Ad:Venture Grants Business Programme*, administered by Leeds City Council as part of the European Union Regional Development Fund. These facts were checked by the administrators of the Grant.
- 3.6 Unfortunately, the planning position was not directly checked by the landowners, who had erroneously relied on the responses from Council Tax and Building Control Sections.
- 3.7 Since the completion of the building, two years ago, the business has expanded in terms of sales. In basic terms, the first floor of the building has come to be used by a further 2.5-3 employees, being an account manager, telephone operator and an admin/office manager. All employees are local to the area.

#### **4.0 PLANNING POLICY AND DETERMINATION**

- 4.1 Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 4.2 Since the grant of planning permission in 2016, the Council has recently adopted its Local Plan, which has recently become the statutory development plan. However, for simplicity, it is accepted that in the case of the building (though without the consideration of the business use) little has changed, insofar as the site is in a rural/semi-rural location and importantly remains designated as Green Belt. Applicable planning policies under the Unitary Development Plan ('UDP'), which in part will have governed the approvals and refusals of applications (though obviously not certificate of lawfulness applications) in the planning history, have effectively been replaced.
- 4.3 Nevertheless, for completeness and following the details in the planning history, the following Local Plan policies would likely apply, to varying degrees:



- **PLP24 – Design**

This effectively replaces for these purposes previous UDP Policies BE1 (Quality of Design) and BE2 (Design)

- **PLP57 - The extension, alteration or replacement of existing buildings in green belt**

This effectively replaces for these purposes previous UDP Policy D11 (the Extension of buildings in the Green Belt)

- **PLP59 – infilling and redevelopment of brownfield sites**

This effectively replaces for these purposes previous UDP Policy D13 (Infill in Green Belt settlements)

- **PLP21 – Highways and Access**

- **PLP22 – Parking**

These, along with PLP 24 (Design) effectively replaces for these purposes previous UDP Policy T10 (Highways and accessibility considerations in new development)

#### 4.4 **National Planning Policy Framework (February 2019) ('NPPF')**

4.4.1 Part 19 of the Publication Local Plan covers green belt, largely reflecting the NPPF as of course expected and required. The Green Belt is addressed more specifically below.  
The NPPF is of course a significant material consideration.

4.4.2 Part 6 of the NPPF – Building a strong, competitive Economy, is relevant. In particular the relevant parts of paragraph 83 and 84 of the NPPF:

*83. Planning policies and decisions should enable:*

*a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings...;*

*84. Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.*

4.2.3 Part 13 – Protecting Green Belt Land – is obviously pertinent. In particular, proposals affecting the Green Belt is covered at paragraph 143 and 144 of the NPPF:

*143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*

*144. When considering any planning application, local planning authorities should*

**Noel Scanlon Consultancy Ltd ('NSCL')**

**NSCL is registered in England with company registration number: 10092591**

**Company registered office: Hollinwood Business Centre, Albert Street, Oldham OL8 3QL and**

**Correspondence Address: 3 Dryden Way, Lindley, Huddersfield, West Yorkshire HD3 3YF**

**VAT Registration Number: 237709683**



*ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.*

#### 4.2.4 **Exceptions**

The NPPF is clear that the Council should regard the construction of new buildings as inappropriate in the Green Belt. There are, however, exceptions in paragraph 145, the most relevant of which, for the purposes of this application are:

*c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*

*d) limited infilling in villages;.....*

*g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:*

*– not have a greater impact on the openness of the Green Belt than the existing development; or.....*

#### 4.3 **Sequential Assessment**

For completeness, in the case of B1 office use, the NPPF at paragraph 88 and the Local Plan at PLP 13 (Town Centre Uses), both identify that a sequential approach should not be applied to applications for small scale rural offices. The adopted Local Plan goes further and establishes a measurement, that the sequential approach will not be required for proposals of 150 sqm and under.

In this case, the area of business use on the first floor is just 55sqm, at a maximum (see below). Accordingly, sequential testing for the B1 office use is not required as part of this application.

#### 5.0 **THE APPLICATION**

5.1 Following constructive dialogue with the Council's Planning Enforcement Section, this application is a retrospective application for the construction and mixed use of a domestic garage/annex outbuilding (ground floor) with part B1 offices (first floor) with ancillary storage.

5.2 Accordingly, although inextricably linked, there are essentially two parts to the application. The first is the building itself, and the second is the mixed domestic and part-business use on the respective floor levels.

#### 5.3 **The Current Building**

5.3.1 For the moment, the following concentrates on the building alone, in the hypothetical situation that the business use on the first floor does not occur.

5.3.2 It is accepted that the building has been built a maximum of 1.3m higher than that which was approved under 2016/90090. It is of course further accepted that 2016/90090 only envisaged a

**Noel Scanlon Consultancy Ltd ('NSCL')**

**NSCL is registered in England with company registration number: 10092591**

**Company registered office: Hollinwood Business Centre, Albert Street, Oldham OL8 3QL and**

**Correspondence Address: 3 Dryden Way, Lindley, Huddersfield, West Yorkshire HD3 3YF**

**VAT Registration Number: 237709683**



single storey and not the inclusion of a loft-style first floor. The explanation for the increase in height has been provided. The applicant has accepted that it got this wrong but had good intentions.

- 5.3.2 2016/90090 followed the refusal of an earlier application – 2014/90615. That application was refused mainly because it was found that the proposal would have resulted in a disproportionate addition over and above the size of the main dwellinghouse, which allegedly would no longer have been the dominant element had that building been constructed. Incidentally, this is disputed, but the 2014 decision was not appealed.
- 5.3.4 That building refused under 2014/90615 was at a right angle when compared with that approved in 2016/90090 and was almost 2m higher than that approved in 2016. The current building that is the subject of this retrospective application is therefore more than 0.5m lower than that refused under 2014/90615 and is built substantially (with minor deviation on width of an increase of 0.37m compared with that approved and a negligible 0.06m in length) on the external footprint of that approved, in substantially the same position.
- 5.3.5 Accordingly, as identified by Planning Enforcement, the problem has been the height of the building, with the alleged resulting bulking and massing. However, the building as constructed is over 0.5m lower than the development refused under 2014/90615.
- 5.3.6 Locally, PLP57 provides that proposals for extension alteration or replacement will normally be acceptable, subject to the relevant listed provisions. This is a retrospective application resulting from a previous application and permission for demolition and replacement of dilapidated garage and outbuildings. PLP57 requires that in the case of replacement buildings (were the business use on the first floor not a consideration), proposals do not result in a greater impact on openness and the materials used should be sensitive to the character of the Green Belt setting.
- 5.3.7 Whilst the garage building is higher than that envisaged, the footprint remains substantially the same. Like the approved garage building in 2016/90090, the enlargement has been confined to the area of 'infill' along the western boundary of the site – the land between no 52 and No 58 - which was seemingly accepted by the Council during the determination of the application. Accordingly, it is submitted that notwithstanding the increase in height, the building as built continues to fall within the exceptions in paragraph 145(d) or more likely 145(g) as identified above.
- 5.3.8 Like the NPPF, Policy PLP24 requires that good design is key and should be at the core of all proposals. The building as constructed has, with minor deviation reflected the positioning and the footprint of the building approved under 2016/90090. The increase in height is unfortunate and is as a result of naivety, but this has been explained above. However, it does not follow that the building as constructed still does not continue to represent good design in accordance with PLP24 and the NPPF.
- 5.3.9 Notwithstanding the increase in height, the development that is the subject of this application (again, with the part-business use aside, at present) does not of itself result in a disproportionate addition or raise an imbalance between dominant and subservient buildings in these

**Noel Scanlon Consultancy Ltd ('NSCL')**

**NSCL is registered in England with company registration number: 10092591**

**Company registered office: Hollinwood Business Centre, Albert Street, Oldham OL8 3QL and**

**Correspondence Address: 3 Dryden Way, Lindley, Huddersfield, West Yorkshire HD3 3YF**

**VAT Registration Number: 237709683**



circumstances. Notwithstanding a maximum increase in height of 1.3m, the outbuilding as constructed is still subservient to the main dwellinghouse. Mitigation measures also include the provision of a natural barrier and permeable materials together with construction materials that are sympathetic to the surrounding character of the area.

- 5.3.10 Therefore, it is submitted that a maximum increase in height of 1.3m compared with that approved, in these circumstances, would notwithstanding the part-business use fall within the exceptions in paragraph 145 of the NPPF. Accordingly, the development that is the subject of this application falls outside the ambit of being inappropriate development, were this application for the building alone.
- 5.3.11 Furthermore, in terms of design, the development is of the highest quality. The materials used are an exact match and are consistent with the stonework, fenestration and rainwater goods as appears on the still dominant main dwellinghouse to the south.
- 5.3.12 It does not follow that simply because the building has been constructed with a first floor and is a maximum of 1.3m higher than that approved, that it has a materially greater impact on the openness of the Green Belt, and is a disproportionate addition to what was approved under 2016/90090, such that the building could not fall within the ambit of the exceptions identified at paragraph 145 of the NPPF.
- 5.3.13 Aside from the increase in height, the design, appearance and integration of the building into the landscape and the streetscene are not in question. The building is constructed using high quality materials, consistent with the main dwellinghouse, is of a design that is sensitive to its Green Belt setting, reinforced by sensitive and appropriate hard and soft landscaping. The resulting building is a considerable improvement in what existed prior to their demolition. The resulting building does not have any greater impact on openness of the Green Belt than that previously approved under 2016/90090, as a result of being a maximum of 1.3m higher than that approved.
- 5.3.14 Were an increase of a maximum of 1.3m in height to have come forward as part of an application following substantial construction under 2016/90090, as this application effectively constitutes, then it would likely be found to not be a disproportionate extension over and above that permitted in the circumstances, particularly as it is still subservient to the main dwelling.
- 5.3.15 Moreover, the impact on the amenity of neighbouring properties of the building itself, notwithstanding its increased height and the part-business use, is non-existent.
- 5.3.16 Of course, although the points made about the building itself are very important, they are to some extent inconsequential. whilst the building itself may more than reasonably fall within the exceptions at 145 of the NPPF, such that it is not inappropriate development requiring the demonstration of very special circumstances. However, the B1 business use on the first floor of the building does bring the application within the ambit of being classed as inappropriate development in the Green Belt.



- 5.3.17 Accordingly, the height of the building, being the key complaint from the Council's Planning Enforcement Section, and the business use of the first floor are seemingly inextricably linked for the purposes of this application.
- 5.3.18 The development maintains the proximity of garage-to-house but uses an entrance for vehicles on the northern side, off the substantial parking area apron. The proximity of the proposed garage to the house emphasises the functional connection between the dominant house and subservient outbuilding.
- 5.4 **The Mixed Domestic Use (Ground Floor) and B1 Business Use (First Floor)**
- 5.4.1 The ground floor of the garage is simply as a domestic garage, able to accommodate two cars and a motorcycle, with all other usual storage one would find in a garage, such as gardening machinery and equipment. On the south elevation, originally intended as the office area on 2016/90090, this is now a small annex/storage area and shower room. The building is not and never has been intended as a separate dwellinghouse. This is an important point, as it is believed that this misunderstanding is where the original complaint appears to have been generated.
- 5.4.2 The Applicant and its brief but important history are described above. It is now the case that the first floor of the garage building, which were previously envisaged for the use as a home office, alongside other domestic uses ancillary to the enjoyment of a dwelling house, such as storage and possibly a child's play area, none of which would be unusual, is now used as the administrative offices of the business.
- 5.4.3 The use falls squarely within B1 office use. The first floor area is identified in blue shade on the plan accompanying this application<sup>1</sup>. The total floor area (internal) for the first floor business use is 55sqm, including the staff/meeting area and associated ablutions. However, it should be noted that this includes the eaves and storage which are considerably below head height, so the actual usable floor space is in any event restricted and is in real terms much lower than 55sqm, possibly less than half of this.
- 5.4.4 There are no walk-in visits from members of the public, no manufacturing of any kind, no showroom facilities, etc. There are rarely visitors to the office, other than occasional meetings in the staff/meeting room identified. The office is simply an administrative hub for the business.
- 5.4.5 As well as Mr. Formisano, who is often frequently out dealing with client-facing meetings, etc., more recently the business currently directly employs 2.5/3 staff who work from this office.
- 5.4.6 At present, alongside the administrative activity, there is ancillary storage with a very small amount of distribution, though the main storage and distribution takes place away from the site. To provide an indication of the level of deliveries and distribution from the site, supermarket and domestic online shopping deliveries are more frequent.

---

<sup>1</sup> Compiled by Messrs ADP Architects; Drawing title: General Arrangement – As Built; Drawing No.: 19035D-01-P02



- 5.4.7 It is important to note that an underpinning requirement of B1 office use is that can comfortably be carried out in a residential area, without detriment to the amenity of that area. There is perhaps no better example than here, of a business use in a sensitively designed high quality building that will seamlessly sit and operate within this area, with very little, if any impact on the amenity of this area.
- 5.5 **Inappropriate Development in the Green Belt and Very Special Circumstances ('VSCs')**
- 5.5.1 Notwithstanding the building itself, the effective part- change of use to B1 offices does not fall within the exceptions as described and consequently is, in policy terms, considered to be inappropriate development.
- 5.5.2 Accordingly, as identified above (paragraph 143 and 144 of the NPPF, etc.), the applicant will have to demonstrate Very Special Circumstances ('VSCs') in order to justify the use of the first floor as B1 offices. Importantly, and to reiterate:
- 144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.*
- 5.5.3 The corollary is that VSCs will exist where harm by reason of inappropriateness and any other harm resulting from the proposal is outweighed by other considerations.
- 5.5.4 The business of the Applicant has been described briefly in the above. The impact on openness as a result of the increased height of the building is kept to a minimum and in our submission of no real additional negative effect. The building is of the highest quality construction and uses matching materials to that of the existing main dwellinghouse.
- 5.5.5 There is no question that having to reduce the height of the building will render the first floor use redundant. Aside from the considerable cost and upheaval, it will mean that the vital administrative side of the business cannot operate, which will mean a considerable impact on the business, as well as the potential loss of local jobs.
- 5.5.6 Furthermore, an increasingly successful business offering a unique product, born in the area, would be left finding new premises. The considerable cost and upheaval will undoubtedly have an impact on the business, financially, logistically and from a business decision-making perspective.  
It is a corporate priority of the Council as identified in the Council's Corporate Plan 2018-2020 to support local business and new business.
- 5.5.7 Delivita Ltd. has already achieved a start-up grant through the Leeds City Council administered European Regional Development Fund. A future move of the administrative side of the business to a more single site use, involving its substantial manufacturing and distribution and possible showroom elements may be desirable. However, at present, this is not a reality and would cause



considerable disruption. The national political and economic backdrop of uncertainty for business decision-making at present obviously does not assist.

- 5.5.8 This application has established that the building itself, although 1.3m higher than that approved under 2016/90090, is a high-quality development, integrating into the street scene and contributing to the vernacular of and continued openness of the Green Belt. Aside from this, this application has shown that the building itself (notwithstanding the business use) could more than reasonably fall within the exceptions in paragraph 145 of the NPPF, as described. To passing traffic, both vehicular and pedestrian, it is submitted that it is in fact of little or no difference in terms of visual appearance than the outbuilding envisaged in 2016/90090.
- 5.5.9 It is therefore submitted that VSCs exist to move that this retrospective application should be approved. The administrative operation of the business being able to continue at present from the first floor of the building clearly outweighs any harm by reason of inappropriateness and any other harm resulting from the development in terms of its impact on openness in the Green Belt.
- 5.6 **Further Considerations**
- 5.6.1 For completeness, given the part- B1 business use, highways and parking should be considered.
- 5.6.1.1 **Highways**  
The large apron drive envisaged in 2016/90090 and as presently constructed on site sees a large parking and turning area, allows vehicles to enter and leave Heator Lane in forward gear, representing good design in accordance with PLP24. Policy PLP21 (Highway safety and access) requires that proposals shall demonstrate that they can accommodate sustainable modes of transport and be accessed effectively and safely by all users.  
The development does not and will not generated significant trip generation. Again, there are infrequent and few visitors to the site as a result of the small part-business B1 office use.
- 5.6.1.2 **Parking**  
Like the NPPF, Policy PLP22 (Parking) has promoted the taking of a flexible approach to parking standards. It is understood that the previous parking standards accompany the previous UDP are replaced by PLP22, with no immediate prospect of further guidance being issued by the Council in the short-medium term.
- 5.6.1.3 It is submitted that the B1 business use element of the first floor of the building does not warrant the allocation of car parking spaces, particularly in this rural area where cars park on the road in any event. The current driveway allows parking for approximately eight vehicles in any event.

**Noel Scanlon**  
**Director & Consultant, NSCL**  
**Tel: 07921 385901**  
**Email: [noel.scanlon@nsconsult.co.uk](mailto:noel.scanlon@nsconsult.co.uk)**