KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT

Reference no.: 2024/CL/92609/W

Site: Anq Distributions, Unit 3, Linthwaite Business Centre, Manchester Road, Linthwaite, Huddersfield, HD7 5QS

Description: Certificate of lawfulness for proposed use for MOT testing station (within a Conservation Area)

Case Officer**:** Chris Cockroft

Decision Reference: PROPOSED USE GRANT

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Kevin Walton

AUTHORISED OFFICER

Date 18-Nov-2024

Officer Report – 2024/92609

Site: Unit 3, Linthwaite Business Centre, Manchester Road, Linthwaite, Huddersfield, HD7 5QS

Proposal: Certificate of lawfulness for proposed use as MOT testing station (within a Conservation Area)

Site Description
This application relates to Unit 3, Linthwaite Business Centre. It is a single storey building, faced with metal cladding and a roller shutter entrance/door. The unit is one of thirteen similar units on the industrial park, which is situated in the Linthwaite Conservation Area.

Lawful Use Certificate

Section 192(1) (a) of the Town and Country Planning Act 1990 ("the Act") permits any person who wishes to ascertain whether any operations or proposed use of buildings or other land would be lawful to make an application to the Local Planning Authority.

Section 191(2) of the Act provides that uses are lawful if:

a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for taking enforcement action has expired or for any other reason);
b) They did not constitute the contravention of any of the requirements of any enforcement notice then in force.

For the purposes of the Act a use is lawful at any time if no enforcement action may then be taken against the use, and the use does not contravene the requirements of any enforcement notice then in force. Section 191(2) (b) states that the inability to take enforcement action may come about because the use did not involve development, or because it did not require planning permission, or because the time for taking enforcement action has expired.

The Relevant Test

The burden of proof lies firmly with the Applicant and the relevant test for whether the operations can be deemed lawful is the "balance of probability".

The Applicant's evidence does not need to be corroborated by "independent" evidence. If the Local Planning Authority has 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

Limitations
A Lawful Development Certificate must contain precise details of what use or operations are found to be lawful, why and when. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies or changes in some way to the point where a "material" change of use takes place, a Local Planning Authority may then consider further development has taken place.

Relevant Information

Material Change of Use

Section 55 (1) of the Act provides:-

"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 a material change in use of any buildings or other land."

Evidence Submitted in Support of the Application

In support of the application the Applicant has provided the following documents:-

- Advice and guidance letter - John Holmes

Evidence Submitted Against the application

None

Site Visit

No site visit undertaken.

Assessment of the Evidence:

The current submission seeks to clarify that the existing vehicle repair garage to include a MOT Testing Station, falls within the same use class and as such does not require planning permission in its own right. This would be on the basis that development as defined by section 55 of the Town and Country Planning Act 1990 provides a number of exemptions to development including any material change of use from a use as defined in the Use Classes Order 1987 (as amended) ["UCO"] to another use falling within the same class. If it is demonstrated the existing lawful use operating within the "planning unit" is Class B2 as defined by the UCO and the supplanting use does not trigger a

material change of use putting the planning use outside Class B2, then a certificate can be issued.

The Applicant, in the application form, claims the unit concerned is currently being used for vehicle repairs (B2) which it has done for numerous years, with a number of other units in the same industrial park being used for very similar purposes. However, the evidence submitted by the Applicant alone is inadequate to substantiate this claim. Consideration is therefore given to the information gathered from other sources. Notwithstanding this, the site has a history as being a business park as indicated un 1965 historical imagery. Moreover, the site was extended under a 1990 planning permission for 13 industrial units suggesting an industrial use of the site. The Council's Tax system also indicates Unit 3 to be industrial in character. The Local Planning Authority has no evidence to suggest the existing use of the premises is not lawfully Class B2 in use.

The introduction of a MOT testing centre would involve the inspection or vehicles arriving at the building with the potential of repairs in connection with the vehicle repair element of the business. The MOT work would not add any significant operation whereby the whole character of the uses changes from a vehicle repair shop is materially changed. The MOT operations would blend into the wider vehicle repairs operations whereby vehicles come and go for repairs inspection. Consequently the operations continue to fall in Class B2 of the Use Classes Order 1987.

Conclusion:
Based on the above evidence supplied by the applicant and the site history, I am satisfied that the current lawful use of the application building is general industrial (Class B2) as defined in the Town and Country Planning (Use Classes) Order 1987. As such, it can also be lawfully used as a MOT station and therefore not resulting in a material change in use as prescribed in Section 55 (1) of the Town and Country Planning Ac t 1990. It is recommended to approve the certificate and confirm the lawful use.

Recommendation – Grant Certificate

Decision Authorisation - Delegated Powers

Application Number: **2024/92609**

Officer Recommendation: **Grant Certificate**

The current lawful use of the building, as a vehicle repair garage, is Class B2 as defined in the Town and Country Planning (Use Classes) Order 1987. The introduction of a proposed MOT testing Station at Unit 3, Linthwaite Business Centre would not materially change the use from Class B2 use and therefore not resulting in a material change in use as prescribed in Section 55 (1) of the Town and Country Planning Ac t 1990.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form			11-SEPT-2024
Location plan			11-SEPT-2024

Report Dated: 05/11/2024