Expiry: 16/1

Development Control – Delegated Officer Report

Application Number: AWDM/1595/23 **Recommendation: Issue certificate**

Site: **4a Southdownview Way, Worthing**

Proposal: **Application for a Lawful Development Certificate for Proposed use of B2 unit for car repairs with MOT testing bay.**

Date of site visit: 23/11

Neighbours checked: n/a

Additional neighbour notifications: n/a

Site and Surroundings

This application relates to a single storey semi detached unit on the south side of Southdownview Way. The unit includes parking for 6 cars on the frontage served by vehicle accesses onto Southdownview Way. To the east is Plumbase. GSK's headquarters are further to the east. To the west is a detached garage/MOT centre.

The unit has a front extension. The original part of the building includes a roller shutter door on the east side of the frontage for vehicle access and includes a large open high ceiling room.

The site is within East Worthing Industrial Estate.

Proposal

The application is for a lawful development certificate that seeks to establish that 4a Southdownview Way has a lawful B2 use and that its use for car repairs and MOT testing does not constitute a material change of use and a planning application is not required.

Supporting information

The applicant writes:

'Key Points of Consideration:

Historical Usage:

Our research indicates that the property was previously utilized by Superior Conservatories as a metal window manufacturer for a continuous period of 5 years. This aligns with B2 General Industrial use, providing a historical precedent for the proposed activity.

B2 Usage:

As per the classification of B2 General Industrial use, the property was previously engaged in activities falling within this category during Superior Conservatories' occupancy. This is a crucial factor in supporting our application for a Lawful Development Certificate for the intended MOT bay use.

Surrounding Context:

The property is not in proximity to any residential areas, minimizing potential impact on residents. Additionally, the building to the west of our property has a history of functioning as an MOT garage for many years, further highlighting the compatibility of our proposed use within the immediate vicinity.

Precedent in the Vicinity:

The existence of a neighbouring property operating as an MOT garage for an extended period establishes a local precedent for similar uses, reinforcing the suitability of our proposed activities.

Application Details:

We have submitted the necessary application documents, including the site location plan, block plan, and floor plans, through the Planning Portal. The reference for our application is [Reference Number].

Request for Consideration:

Given the historical usage, lack of proximity to residential properties, and the established precedent in the vicinity, we kindly request your thorough consideration in issuing a Lawful Development Certificate for B2 General Industrial use at [Property Address] specifically for an MOT bay.

Additional Information:

Should you require any further documentation or clarification to support our application, please do not hesitate to contact us. We are committed to providing any information necessary for the efficient processing of our request.

Conclusion:

We believe that the collective evidence presented strongly supports the lawful use of the property for B2 purposes, particularly as an MOT bay. Your favourable consideration of our application will not only facilitate our business operations but also contribute positively to the local community.'

Relevant Planning History:

WB/1271/87 – Removal of condition 6 of WB/0585/67 (personal permission) Granted.

WB/1053/87 – Sub division of existing industrial building and extension on east elevation together with formation of addition car parking.

WB/0585/67 – Erection of factory and offices, industrial area 4500 sq ft, office area 1500 sqft for the production of electrical components with 13 car parking spaces at Broadwater Trading Estate off Southdownview Road. Granted

Consultations: n/a

Representations: n/a

Planning Assessment

The relevant consideration are the facts of the case and the relevant planning law: the planning merits of the proposal are not relevant matters here

The determination of applications for Certificates of Lawfulness is restricted to consideration of the lawfulness of the proposal. Effectively, the issue for consideration is whether the proposal needs planning permission by means of an application, or, alternatively may be carried out without any such need because it is not development or is permitted development or is *de minimis* or is not a material change of use or is immune from enforcement and so has achieved lawfulness. The, otherwise, planning merits or de-merits of a proposal are outside of the scope of the determination.

The relevant test for such an application is whether, on the balance of probabilities, the applicant has proven the proposed use is lawful. The onus is upon the applicant to demonstrate proof.

It is normally accepted that car repairs and MOT service centres fall within Use Class B2 *General Industry* because of the uses carried out and their propensity to harm the amenity of any residential area.

The applicant states that Superior Conservatories occupied the site for a continuous period of 5 years and that they were metal window manufacturers.

Google street view shows that CRK (Conservatory Roof Kits) were on the site from at least October 2015 until at least October 2020. By April 2021 Superior Conservatories had taken over the site. Google Street shows their fascia reading ‘Manufacturers of Lantern Roofs, Conservatories and Bespoke Roofs’. The applicant states that they are the same business, rebranded, and that they vacated the site in April 2023.

The unit is currently vacant.

Planning history confirms this site was built in the late 1960’s as an industrial unit with ancillary office space. In the late 1980’s it was subdivided into 2 industrial units with an east side extension.

The next step is whether the use of the building for MOT testing amounts to a material change of use which requires planning permission.

It is important to consider the current function and use of the property and compare this to the proposed use. If there is no material difference in activity between the current, or in this case, last use and the proposed use for Car repairs/MOT testing it can be concluded that there will be no material change of use.

The applicant has provided information that a single bay would be used for the purposes of MOT testing and the remainder of the unit used for car repair purposes with ancillary office/storage. There would be no change to the external appearance of the building.

The last known use was a manufacturing use, B2. The proposed use, including MOT testing, is normally associated with a B2 general use. This is cited in the London Borough of Redbridge Council decision of an appeal against their refusal to grant a certificate of lawfulness. In the appeal decision it is stated that none of the activities involved in MOT testing were intrinsically different from those arising in the normal course of vehicle servicing, and could be regarded as elements in the same operation. There is nothing in the current application which would go against this long standing appeal decision. As such the proposed use would not constitute a material change of use

Conclusion

The onus of proof rests on the Applicant to provide evidence that demonstrates (on the balance of probabilities) that there will not be a material change of use. On the balance of probability in view of the current and historical use of the building, the supporting material, it is considered that use for car repairs with a single MOT bay would not constitute a material change of use.

RECOMMENDATION:

Issue Certificate

REASONS FOR RECOMMENDATION:

It has been accepted that on the balance of probability the proposed use for car repairs with single MOT testing bay does not amount to a material change of use and no development requiring planning permission would therefore take place under Section 55(2) of The Town and Country planning Act 1990 (as amended)

This certificate relates only to 4a Southdownview Way as outlined in red on the submitted site plan received on the 21st November 2023 and floor plan received on

21st November 2023 and the precise use referred to below and within the supporting information:

The use of a property for car repairs with MOT test bay.

The use is not liable to enforcement action under Section 172 of the Act. However, if any further development/intensification and change in circumstance is carried out subsequent to the issue of this certificate, it may be liable to formal enforcement action by the Local Planning Authority.

This certificate only makes lawful the uses referred to above and does not provide immunity from enforcement for any other use

Is recommendation contrary to letter(s) of representation? N/A

Case Officer:	MOK	Date:	12/12/23
Authorised by:	Jo Morin	Date:	13.12.2023