Development Management - Delegated Officer Report

Application Number: AWDM/0271/19 **Recommendation – Grant Certificate**

Site: **Ingleside Garage, Ingleside Road, Lancing, BN15 8EL**

Proposal: **Application for a Certificate of Lawfulness for existing use as car repair garage for the servicing, maintenance, bodywork repairs and paint spraying of motor vehicles together with tyre and exhaust fitting (Use Class B2). Use of land to west of Ingleside Road for parking and storage of motor vehicles in connection with the garage use (Use Class B8)**

Date of site visit: N/A

Neighbours checked: Y

Additional neighbour notifications: N

Proposal, Site and Surroundings

The application relates to an existing building that has been operating as a garage for some time. The surrounding area is predominantly residential and there are commercial uses nearby, i.e. retail. The adjoining building at 45-49 Penhill Road, was formerly a cinema and had other uses after the cinema closed, i.e. offices, but now has an extant planning permission for redevelopment to flats.

The application seeks approval for a Certificate of Lawfulness for an existing use as a garage including car repairs for the servicing, maintenance, bodywork repairs and paint spraying of motor vehicles including tyre and exhaust fitting (Use Class B2). Also, to use the land to the west of Ingleside Road for the parking and storage of motor vehicles in connection with the garage us (Use Clase B8).

Relevant Planning History

AWDM/1168/18 Change of use form B2 (General Industrial) to mixed use B2 and MOT testing. **Withdrawn 22.10.2018**

L/78/87/TP Change of use of premises for servicing, repairing and MOT testing motor vehicles with hours of working extended to include from 0800 to 1800 on Saturdays **Approved 29.05.1987**

L/64/89/TP Continued use of premises for servicing, repairing & MOT testing of motor vehicles (renewal of L/78/87) and to include use for light engineering. **Approved 01.06.1989**

L/71/91/TP Continued use of premises for servicing**,** repairing and MOT testing of motor vehicles with light engineering (renewal of L/64/89) **Approved 16.07.1991 – Temporary permission – expire 31.07.94**

L/94/94/TP Continued use for servicing repairing and MOT testing of motor vehicles with light engineering (renewal of L/71/91) **Temporary permission – expire 31.07.1995**

L/88/95/TP Continued use for servicing, repairing and MOT testing of motor vehicles with light engineering **Refused 11.09.1995**

L/137/96/TP Continued use as a vehicle repair workshop/garage with vehicle storage and car park **Approved 18.11.1996 – temporary permission expiry 30.11.1998**

L/15/97/TP Use as vehicle repair workshop/garage with vehicle storage and car park – (Removal of condition 1 of L/137/96 to enable permanent use as vehicle repair workshop/garage with vehicle storage and car park)

Refused 10.03.1997 – Appeal withdrawn 22.12.1997

Enforcement Notice Without planning permission, the use of the land for the display and sale of vehicles **Notice takes effect on 12.06.2002**

Enforcement Notice Without planning permission, the standing of van bodies/containers and the failure to comply with Condition 1 of planning permission L/137/96/TP (for continued use as a vehicle repair workshop/garage with vehicle storage and car park) which requires:-
"The use hereby permitted shall be discontinued permanently and the land and premises restored to their former condition, or to a condition to be agreed in writing by the LPA on or before the expiration of the period ending on 30.11.98"
Notice takes effect on 25.06.2001

Consultations

Adur & Worthing Councils: The Senior Lawyer has given the following advice

10.05.2019
Further to our conversation, I have looked at the application for the certificate of lawful development including the appendices referred to in the supporting statement.

I note that the application was made on 8th February 2019 and the relevant time limit for enforcement is 10 years. The claimed use must therefore have been taking place continuously for the 10 years prior to the date of the application.

The application says that the garage has been in existence since 1989. I note that there have been various temporary planning permissions permitting the premises to be used as a garage. The last permission for the garage expired in 1998. You confirmed that the council has not taken any enforcement action or visited the premises since this time and you have no evidence as to the use

of the premises since this time other than what has been provided by the applicant. I did find reference to an officer report from 2011 (ADC/0078/11) which refers to the garage so there is some limited evidence that we hold that the garage was operating in 2011.

In my view, the supporting evidence provided by the applicant is sufficient to demonstrate that the garage has been operating continuously for at least 10 years prior to the application for the certificate. The various receipts for parts and company records all relate to garage type services and cover the relevant period. The documents are supported by the statutory declarations from Graham Munday who confirms the use of the property as a garage and sets out in further detail the type of work undertaken at the premises. There are also supporting statutory declarations from the landlord and letters from an employee although the latter document only covers the later period. There are also letters from neighbours which cover the 10 year period which confirm the continuous use. The statutory declarations should be given considerable weight in the absence of any evidence to the contrary as they are sworn statements. The letters from the neighbours and the employee carry a bit less weight because they are letters rather than statutory declarations. However, given that they are made by third parties it is not surprising that they have provided their evidence as letters rather than statutory declarations. The information provided in the letters is not contrary to any information we have and there is nothing to suggest that the letters are untrue. Taking everything together, I believe that the applicant has provided sufficient evidence to demonstrate that the premises have been used as a garage continuously for the previous 10 years. The garage may have been operated by various companies, trading names and individuals during this time but the use has been continuous. I would therefore grant the certificate applied for.

We did discuss the issue of MOT testing. This does not form part of the application. There is mention of MOT work being undertaken previously but this appears to have been discontinued and there is no evidence of MOTs being undertaken continuously during the past 10 years. The applicant will therefore need to submit a fresh application to include this use if he wishes to carry out MOT testing on site.

22.05.2019
I believe there is sufficient evidence for the B8 use. Graham Munday's statutory declaration refers to the use of the land opposite for the parking and storage of vehicles between 1988 and 2018. John Rodwell mentions the parking area in his statutory declaration although in the context that the lease included this parking and vehicle storage area.

Timothy Granger refers to a visit in 2014 and specifically mentions the garage and parking use. There is also a letter from Martin Greenfield, one of the neighbours, who states that the garage and parking has been in operation since he started his business in February 2008.

There are also the Google photos from 2009, 2011, 2012 and 2017 all of which show the parking area in use.

For these reasons I believe there is sufficient evidence to grant B8 use as well as B2 use.

There is little in the submitted evidence regarding the office use. John Rodwell refers to the offices being reinstated in 1988 for normal office use but there is no direct evidence to show that the offices have been used for this purpose during the past 10 years. As things stand, there is insufficient evidence to demonstrate the office use. I would suggest that the applicant is contacted and asked whether he is able to provide further evidence on this use which can then be considered.

18.06.2019
The application specifically refers to ancillary office use. Ancillary uses can come within a CLEUD provided that sufficient evidence is provided to support the use.

In this case, there is insufficient evidence to include the ancillary office use within the certificate as things stand. The business rates documentation refers to office space as part of the description of the site. It does not provide any information as to the use of the area during the relevant time. The planning agent's letter merely sets out the current use of the site including the office space. As the current owner only took over the lease recently, this does not provide the necessary evidence showing the ancillary office use for 10 years.

There are two ways that you can proceed. One is to amend the wording of the certificate to remove ancillary office use. Section 191(4) of the Town and Country Planning Act 1990 allows the local planning authority to modify or substitute a description so it is possible to do this. The alternative is for additional evidence to be provided showing the use of the offices for the 10 year period. If this is provided, the ancillary office use can be included within the certificate. The PPG makes it clear that the certificate must be sufficiently clear and particular care is needed for a mixed use site. Therefore, unless sufficient evidence of the office use is provided this should be removed from the certificate description.

25.07.2019
The neighbour objection does not have a bearing on the decision to grant (or not) the CLUED as the objection relates to the planning merits which are not relevant here. If the objection provided evidence that the existing use had not been carried out for 10 years or the uses were different to those in the application, this would be relevant. However, I do not think that the comments should affect your decision.

Representations:

Lancing Parish Council: No objection

1no. Letter of Objection : 13 Penhill Mews, 65 Penhill Road – NB as this is an application for a Certificate of Lawfulness, the planning merits of the case are not material considerations.

Representation : 2 Hamilton Road: Comment regarding decision and updating of online and no further comments received as after expiry time

Planning Assessment

There are 2 types of lawful development certificate. A local planning authority can grant a certificate confirming that:

(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990; or
(b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.

This application refers to (a) above

Anyone can apply to the local planning authority to obtain a decision on whether an existing use or development, or a proposed use or development, is lawful for planning purposes or not. If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

The key statutory framework for such applications and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 ("the Act")

Once a certificate has been granted following an application under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful, unless there is a material change before the use or development has begun (section 192(4))

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

An enforcement notice is not in force where an enforcement appeal is outstanding or an appeal has been upheld and the decision has been remitted to the Secretary of State for redetermination, but that redetermination is still outstanding.

An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about

the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

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.

A certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision.

If issued, a certificate under section 191 shall:-

a) Specify the land to which it relates;
b) Describe the use, operations or other matter 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, operations or other matter to be lawful; and
d) Specify the date of the application for the certificate.

Consideration

The Council's Lawyer has summarised the submitted evidence in her comments reported above. There has been no evidence submitted by third parties which contradicts the submission, therefore, on the balance of probability, the use applied for (excluding ancillary office use and MOT) is lawful having occurred for at least 10 years namely:-

1) the use of the property within the red edge of the application on the east side of Ingleside Road as car repair garage for the servicing, maintenance, bodywork repairs and paint spraying of motor vehicles, together with tyre and exhaust fitting (Use Class B2), and including the temporary storage of old vehicles awaiting the stripping of parts and final disposal elsewhere. The use operating six days a week 0800 to 1700 Monday to Thursday, 0800 to 1600 Fridays and 0800 to 1200 on Saturdays; and

2) the use of the land within the red edge of the application on the west side of Ingleside Road for the parking and storage of motor vehicles in connection with the garage use (Use Class B8), made up by the storing of vehicles

associated with the business, customer vehicles awaiting work or collection, and the parking of a breakdown recovery truck.

1) and 2) being indicated on drawing numbers IG.19.01A and IG.19.02 received on 20.02.2019 2019 have existed for more than 10 years and as such have achieved immunity from enforcement and are lawful in planning terms.

Recommendation

Issue a Certificate of Lawfulness for the Existing Use.

Case Officer: Eve Hearsey Date: 25.07.2019

Authorised by: Peter Barnett Date: 25 July 2019