

<u>APPLICATION NO:</u>	22/00495/CLD	<u>CASE OFFICER:</u>	Maxine Wishart
<u>WARD:</u>	Northwood	<u>PARISH:</u>	
<u>LOCATION:</u>	3 North Mersey Business Park, Knowsley Industrial Park, Kirkby		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR USE OF EXISTING OFFICE FOR ADMINISTRATIVE DUTIES ASSOCIATED WITH PRIVATE HIRE TAXI SERVICE		

Site Description

The application site is located on North Mersey Business Centre on Woodward Road, Knowsley Industrial Park, Kirkby.

The unit the subject of this application forms one unit within a larger purpose built two-storey office building which comprises managed workspace of office units. The building forms part of the wider North Mersey Business Centre which provides industrial units and offices of a range of sizes to provide start-up premises.

Proposal

The application has been submitted under S192 of the Town and Country Planning Act 1990 (the 1990 Act). It is an application for a Certificate of Lawfulness to seek confirmation that the proposed use of offices within an existing building by a private hire taxi operator falls within Use Class E (g). It is not an application for planning permission.

S192 allows an applicant to apply for a determination to ascertain whether any proposed use of buildings or land would be lawful and does not require any further planning permission. If the Local Planning Authority (LPA) is provided with information satisfying it that the use would be lawful if it were to have begun at the time of the application, a certificate should be issued.

In such cases, the LPA needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application process.

The application, as submitted, seeks a determination as to the lawfulness of a use for administrative duties associated with private hire taxi service being sited and operated from the unit which has an established Office use.

To be lawful for that a use, Unit 3 of North Mersey Business Centre must have been primarily in a use as an Office Use Class E for a continuous ten year period prior to the date of the LDC application. Thus, it must be shown that the premises have been primarily Office use on or before 10 August 2012.

The effect of granting a certificate is not to grant planning permission for the proposed use. In this instance a certificate would confirm that the use would fall within Use Class E (commercial, business and service) would not amount to development.

Consultations

N/A

Representations

N/A

Relevant Planning History

K/APP/00018

K/DPP/13693

CONVERSION OF BUILDINGS TO FORM MANAGED WORKSPACE UNITS, ERECTION OF 2.4 M HIGH LOCHRIN FENCING AND CONSTRUCTION OF VEHICULAR ACCESS.

Granted – November 1991

K/DPP/14094

CONVERSION OF EXISTING DEPOT BUILDINGS NUMBER 1,2 & 3 TO NEW WORKSHOP UNITS TOGETHER WITH EXTERNAL ALTERATIONS TO BUILDINGS AND FORMATION OF NEW VEHICULAR ACCESS FROM WOODWARD ROAD TOGETHER WITH LANDSCAPING AND FENCING.

North Mersey Business Centre

Granted - April 1992

18/00724/CLD

USE OF EXISTING OFFICE FOR ADMINISTRATIVE DUTIES ASSOCIATED WITH PRIVATE HIRE TAXI SERVICE

103 North Mersey Business Park

Granted - February 2019

19/00266/CLD

CERTIFICATE OF LAWFULNESS FOR USE OF EXISTING OFFICE FOR ADMINISTRATIVE DUTIES ASSOCIATED WITH PRIVATE HIRE TAXI SERVICE

101 North Mersey Business Park

Granted – June 2019

Relevant Policy

N/A

Article 35 Statement

N/A

Assessment

OFFICER APPRAISAL

In this case, the key issue is whether or not an online taxi booking app office would fall within Use Class E or a sui generis taxi booking office.

Planning Permission Ref: K/DPP/14094

Planning permission granted in 1992 under reference K/DPP/14094 for the conversion of existing depot buildings number 1,2 & 3 to new workshop units together with external alterations to buildings and formation of new vehicular access from Woodward Road together with landscaping and fencing.

Lawful implementation of planning permission Ref: K/DPP/14094 Planning permission is lawfully implemented where:

- (a) All pre-commencement, pre-use, or pre-occupation conditions which go to the heart of the permission have been discharged in full by the LPA; and
- (b) The use and/or the operational development has commenced.

The records of the Government's Business Rates Valuation records indicate that the use of the building has been in material use as offices and premises since at least 1 April 2010. There are no records of any planning applications to change the use of the premises from the use granted.

In view of the above, it is concluded that there is no reason to believe that the original planning permission was not commenced and evidence indicates that the premises have been in operation as office use for a period of at least 10 years.

Under section 171B of the 1990 Act, the time limit for taking enforcement action against a material change in use, other than change of use to a dwelling house, is 10 years. Therefore, in the context of the current application, the 10-year rule would apply.

Extent to which planning permissions limit the use

Case law indicates that unless a planning condition expressly limits a development to the specific use described then any other use within the same Use Class is not prevented. *Wilson v. West Sussex CC* [1963] 2 Q.B. 764 (agricultural cottage) and *East Suffolk CC v. SSE* (1972) 70 L.G.R. 803 (detached bungalow or house for occupation by an agricultural worker) established that the initial use of a development is limited by the description of that development, but from the above cases, such a description could not prevent the subsequent use of the property for some other purpose within the same Use Class.

It was subsequently confirmed that in the absence of an express condition attached to the permission, this does not prevent a different use being implemented at a later date, provided it does not amount to a material change of use. (*I'm Your Man Ltd v. SSE* [1998] P.L.C.R. 107, also *Uttlesford DC -v- SSE* (1989) JPL 685).

The planning consent for the building under reference K/DPP/14094 contains planning conditions restricting the use to specific uses for buildings covered by that phase of development, namely buildings 1, 2 and 3. Building 1 was subdivided into 1,1A and 1B. The conditions restrict the use as follows:

Condition 1

"The development hereby granted permission shall be restricted to uses with Class B1, B2 and B8 of the Town and Country Planning Use Classes Order 1987, only and for no other purpose without first obtaining planning permission from the Local Planning Authority."

Condition 2

“Buildings 1, 1A, 1B and N. 11 shall be restricted to uses within Class B1 and B8 only of the Town and Country Planning Use Classes Order 1987, and for no other purposes without first obtaining permission from the Local Planning Authority.”

Therefore, it follows that the permission does not prevent any subsequent use from taking place within the same Use Class.

Section 55 Meaning of "development"

'(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.'

The main consideration when determining this application for a Certificate of Proposed Use is whether or not the resultant use would be considered as a material change of use.

Planning law states that changes of use within the same use class is not development

The following is an extract from the Town and Country Planning (Use Classes) Order 1987 (as amended) setting out Class E (Commercial, Business and Service):

Use for all or any of the following purposes-

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,*
- (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,*
- (c) for the provision of the following kinds of services principally to visiting members of the public—*
 - (i) financial services,*
 - (ii) professional services (other than health or medical services), or*
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,*
- (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms or use as a swimming pool or skating rink, principally to visiting members of the public,*
- (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,*
- (f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,*
- (g) for—*
 - (i) an office to carry out any operational or administrative functions,*
 - (ii) the research and development of products or processes, or*

(iii) any industrial process,

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

The use of a taxi-business is specifically excluded from any Use Class by reason of Article 3(6)(f) of the Use Class Order 1987 (as amended), such a use is 'sui generis'. This is indeed the case but this would not preclude a private hire/taxi firm (or any other business) from using the premises purely as an office rather than as a sui generis premises from which the taxi business / hire of motor vehicles were operated and which were used by customers and drivers.

In that regard, a traditional taxi booking office would involve activity from the comings and goings of drivers and customers. They would normally have facilities such as a booking office and potentially a waiting area, where members of the public visit to book taxis.

Applicant's Operational Model

In this instance, the applicant, however, wishes to use the premises solely for App based bookings. The drivers would not need to access the premises as all dealings with the drivers is done online. Customers would not access the building as they would book via the app. The applicant has indicated that they would not have any staff in the building as all work is done by the app and they would not be operating a counter service.

As such no radio masts, waiting rooms for customers and drivers, vehicles, or counter services are required. Drivers would not attend the office and as such there would be no additional parking demand over a standard office.

Permission would only be required were the use was materially different from the permitted use. The issue here is whether the proposed use is materially different from the permitted office use (Class E).

Conclusion

Given the above factors, the proposal is not considered to change the primary use of the unit. For this reason, it is concluded that the proposed use would fall within Use class E and that a material change of use would not take place. Hence it is not considered to be development, as defined in Section 55 of the Town and Country Planning Act 1990 and does not require planning permission.

Recommendation

A Certificate of Lawfulness be issued as the proposed use is permitted under the provisions of Class E of Schedule 2, Article 3, Part A of the Town and Country Planning (Use Classes) Order 1987 (as amended).

- 1) The proposed use of the premises for the undertaking of an app-based Private Hire Vehicle operator is considered to be consistent with the existing lawful use – Class E of Schedule 2, Part A of the Town and Country Planning (Use Classes) Order 1987 (as amended) and therefore a material change of use would not occur.

Signed Case Officer:

M Wishart

**Signed Authorising
Officer:**

Alan Kilroe

Date:

13/12/22

Appendix 1 – Google Map Images

