

<u>APPLICATION NO:</u>	23/02750/CLD	<u>CASE OFFICER:</u>	Lee Osborne
<u>WARD:</u>	Northwood	<u>PARISH:</u>	
<u>LOCATION:</u>	Units 1D To 1E, Academy Business Park, Lees Road		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR PROPOSED USE OF B8 STORAGE AND DISTRIBUTION USE UNITS AS B8 USE WITH ANCILLARY TRADE COUNTERS		

Site Description

The application relates to 2 units within Academy Business Park accessed from Lees Road and located towards the eastern boundary of the overall Academy Business Park site. The area is primarily industrial and commercial, with Academy Business Park housing B2 and B8 units, some with trade counters. Also within Academy Business Park are two fast food restaurant drive-thru's, a drive-thru coffee shop and a petrol filling station with attached shop.

Proposal

The application has been submitted under S192 of the Town and Country Planning Act (The 1990 Act). The units have light industrial (Use Class E (g) iii), general industrial (Use Class B2) or Storage and Distribution (Use Class B8) under planning permission 19/00337/OUT, with specified trade counter size for Units 1E-1F of that permission with no specified trade counter specification for Units 1D-1E under that permission. This application seeks confirmation that B8 Use of a unit(s) can be used with trade counters, the other uses would be as previously approved.

Consultations

None Required

Representations

NA

Planning History

19/00337/OUT - Outline planning application for the demolition of weighing station and the erection of 5 industrial units (use class B1(c)/ B2/B8); 7 trade counter units (B8 use); 1 self-storage facility (B8 use); 1 retail/food unit (use class A1/A3/A5) and 1 drive-thru unit (use class A1/A3/A5) together with car parking and associated works. Granted: 26.02.2020.

20/00146/REM - Application for approval of reserved matters pursuant to outline planning permission outline planning permission 19/00337/OUT - for the demolition of weighing station and the erection of 5 industrial units (use class B1(c)/B2/B8); 7 trade counter units (B8 use); 1 self-storage facility (B8 use); 1 retail/food unit (use class A1/A3/A5) and 1 drive-thru unit (use class A1/A3/A5) together with car parking and associated works - - approval sought for landscaping. Granted: 12.06.2020.

19/00337/NMA - Application for a non-material amendment following grant of planning permission 19/00337/OUT outline planning application for the demolition of weighing station and the erection of 5 industrial units (use class B1(c)/B2/B8); 7 trade counter units (B8 use); 1 self-storage facility (B8 use); 1 retail/food unit (use class A1/A3/A5) and 1 drive-thru unit (use class A1/A3/A5) together with car parking and associated works. (approval sought to amend the pitch roof and to include roof lights to units 1d and 1e). Granted: 07.10.2020.

19/00337/NMA1 - Application for a non-material amendment following grant of planning permission 19/00337/OUT (outline planning application for the demolition of weighing station and the erection of 5 industrial units (use class B1(c)/B2/B8); 7 trade counter units (B8 use); 1 self-storage facility (B8 use); 1 retail/food unit (use class A1/A3/A5) and 1 drive-thru unit (use class A1/A3/A5) together with car parking and associated works) to allow for amendment to approved plans relating to the re-siting of units 1f - 1h and alterations to the car parking layout). Granted: 06.01.2022.

Legal Context

The key statutory framework for Lawful Development Certificates and their determination is set out in the sections 191-193 of the Town and Country Planning Act (as amended).

The application is made under S192 of the Town and Country Planning Act 1990 (as amended).

An application under S192 seeks to establish whether:

- a) Any proposed use or building or land; or
- b) Any operations to be carried out in, on, over or under land, would be lawful.

S192 (2) sets out that if an application under this section, the Local Planning Authority are provided with information satisfying that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.

It is therefore not an application for planning permission. Instead, it is a legal determination based upon evidence and facts presented by the applicant as to whether the stated activity would be lawful. In such cases, the Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Issues such as the planning policies do not fall within the consideration as the decision is based on fact and not on policy grounds and therefore planning merits are not relevant at any stage in this particular application process.

The issue therefore is whether a trade counter can be used in a B8 Use operations within any of the specified units.

Assessment

The granted uses of the units is specified as light industrial (Use Class E (g) iii), general industrial (Use Class B2) or Storage and Distribution (Use Class B8) with no specified restrictions within those stated uses. The application seeks clarification that the B8 Use of a unit can include a trade counter.

Trade counters within units can occur where the primary use is B8 Storage and Distribution where the trade counter is an ancillary element. B8 uses with trade counters generally are stocked with materials, tools or similar supplies and service local trades which typically have accounts and order online and collect. However, unless there is a specific restriction with regard customer usage such as customers having to be VAT registered then members of the public can call in as customers such as with Screw Fix units, but majority of custom still usually tends to be trade based.

The definition of use class B8 does not include the term 'trade counter'. There are no permitted development rights from B2 or B8 to retail uses however any lawful use carries with it the rights to carry on ancillary uses. To be lawful, any element of trade counter use must be ancillary to the primary B2 or B8 use. A trade counter could be considered ancillary to a warehouse use, so trade / retail use can be utilised if there are no restrictions provided that the trade counter is ancillary to the primary use or is *de minimis*.

'Ancillary' status would be lost where an ancillary use grows to the point where it can no longer be said to be ancillary but has become a separate use in its own right. There are no planning conditions which restrict the floor area which may be used as 'trade counters' in units 1D-1E). As such an element of trade counter use is permitted without express restriction as long as the use remains ancillary.

The East Suffolk planning appeal (Carr Road, Felixstowe ref: 3273329) submitted in support of the applicant's is consistent with the above advice because:

1. in para 8 of the appeal decision letter, it is stated "*The appellant explains that the B8 element accounts for 28% of the total floorspace and the units would be used as trade counters, where the primary use is storage with an ancillary trade counter element....*"
2. the Planning Statement which supported the original application (DC/20/1666/FUL (attached)) states at paras:
3.0 '*... Some of the B8 units would belikely [sic] to be used as trade counters, where the primary use is storage, with an ancillary trade counter element....*'
5.3 '*... Some of the B8 uses are likely to be trade counter uses, which are primarily storage uses, with a small area of the unit devoted to trade counter service.*'

In the absence of a condition which limits the floor area which may be put to 'trade counter' use, units 1D-1E at Academy Business Park may include an element of 'trade counter' use which is unrestricted in terms of floor area, but which must nonetheless be ancillary to the primary (B2 or B8) use of the planning unit.

The application could be refused for being insufficiently precise. However, the units were speculative with no end user as built and as such precise details of ancillary uses (if any) are unknown. However, the applicant has amended the description to "B8 with ancillary trade counter" which is specifying that a trade counter is lawful in a B8 Use unit so long as it is "ancillary".

The LPA has insufficient information to determine with respect to any particular unit to determine the specific trade counter use but granting such with the amended description to ensure ancillary use could facilitate the leasing/renting of the units.

Conclusion

It is concluded the approved B8 Use of the units can operate with trade counters provide that the trade counter is ancillary to the B8 Use under the terms of the Town and Country Planning Use Classes Order 1887 as amended. Whilst “ancillary” is a matter of fact and degree nevertheless if at any point that a unit or units do operate as a B8 Use if it is deemed that any trade counter element operates in a greater capacity than “ancillary” then action could be taken so that it reverted back to an ancillary use.

Recommendation

The use of Units 1D - 1E as B8 Use Units with ancillary trade counters would be lawful development, provided that the trade counters are ancillary. The Council has insufficient information before it to determine with respect to any particular unit to determine what extent of trade counter use in that unit would be ancillary.

SCHEDULE 1

Date Received	Ref. No	Version	Drawing/Document Title
26/10/2023	1376-PL-2001	-	LOCATION PLAN
26/10/2023	GB/PLANNING	-	EMERSON GROUP SUPPORTING LETTER (23 OCTOBER 2023)
26/10/2023	GB/Planning	-	EMERSON GROUP SUPPORTING LETTER CLARIFICATION (23 OCTOBER 2023)
31/03/2025	EMAIL	-	CHANGE OF DESCRIPTION AGREEMENT FROM APPLICANT

Signed Case Officer¹: **Lee Osborne**

Signed Authorising Officer²: **Alan Kilroe**

Date: **15 April 2025**

¹ I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

² I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

