

Reference No: 5/19/2434**Valid Date:** 02/10/2019**End of Stat Period Date:** 26/11/2019**Case Officer:** Elizabeth Burnham**Report Written Date:**

Applicant: Horseshoe Business Park**Proposal:** Certificate of Lawfulness (existing) - Continued use of the property as B1 (offices)**Site Address:** Horseshoe Business Park Lye Lane Bricket Wood Hertfordshire

Ward: PARK STREET**Parish:** ST STEPHEN**Constraints:**

Source Protection Zones

Enforcement

Metropolitan Green Belt

Area of Special Control for Adverts

BACKGROUND**Site / Surroundings:** Horseshoe Business Park is an existing detached building to the north side of Lye Lane. The site is located within the Metropolitan Green Belt.**Proposal:** Certificate of Lawfulness (existing) - Continued use of the property as B1 (offices)**Relevant History:****5/2018/2311** - Certificate of Lawfulness (existing) - Use of the property as B1 (offices)

Reason for refusal:

'The applicant has failed to demonstrate that, on the balance of probability, office use (Class B1 (a)) began more than 10 years before the date of this application and that this office use (Class B1 (a)) in breach of condition 5 of planning permission 5/1994/1088 began more than 10 years before the date of this application, as defined by Section 171B of the Town and Country Planning Act 1990. A Certificate of Lawfulness cannot therefore be issued.'

5/2015/1571 - Unit 5 Horseshoe Business Park Lye Lane Bricket Wood Hertfordshire AL2 3TA. Change of use from Class B8 (storage) to Class A1 (hairdressers). Withdrawn 27/08/2015**5/1996/0276** - The Old Riding School, Lye Lane, Bricket Wood - Deemed application on appeal against Enforcement Notice for the stationing of mobile home and covered storage area. Withdrawn Decision Date: 02/04/1996 - Appeal lodged: 21/02/1996 - Appeal decision: Withdrawn On 02/04/1996**5/1994/1088** - Old Riding School, Off Lye Lane, Bricket Wood. Conversion of building to provide 3 Class B1 units amendment to permission 5/91/0599 and 5/91/0598 dated 23/10/91). DC3 Conditional Permission Decision Date: 06/09/1994**Including Condition 5:**

5. The building which is the subject of this permission shall be used only for light industrial/craft units and B8 storage use and shall not be used for any other purpose, including other uses within Class B1, of the Town and Country Planning Use Classes Order 1987, without the prior approval in writing of the District Planning Authority.

5/1992/1919 - Old Riding School, Off Lye Lane, Bricket Wood. Certificate of Lawfulness (proposed) extension. Refused 08/02/1993. Appeal lodged: 24/03/1993 - Appeal decision: Dismissed On 14/01/1994

Reason for refusal:

'The proposal for an extension would require the submission of a formal planning application by virtue of the provisions of Schedule 2, Part 8 (A1 F) of the Town and Country Planning General Development Order 1988 (as amended).'

5/1991/0599 - Old Riding School, Lye Lane, Bricket Wood. Change of use and alterations to provide three light industrial units together with car parking and landscaping. DC4 Refusal Decision Date: 29/05/1991 - Appeal lodged: 25/07/1991 - Appeal decision: Allowed On 23/10/1991

5/1991/0598 - Old Riding School, Lye Lane, Bricket Wood. Change of use and alterations to provide three storage units (B8) together with car parking and landscaping. DC4 Refusal Decision Date: 29/05/1991 - Appeal lodged: 25/07/1991 - Appeal decision: Allowed On 23/10/1991

5/1989/1592 - The Old Riding School, Lye Lane, Bricket Wood. Workshop building for B1 Business use. DC4 Refusal Decision Date: 16/08/1989 - Appeal lodged: 17/08/1989 - Appeal decision: Dismissed On 12/06/1990

Reason for refusal:

'The site is within an area described in the approved County Structure Plan as Metropolitan Green Belt, the precise boundaries of which have been defined in the St. Albans District Plan. Within the Green Belt permission will not be given except in very special circumstances, for development or uses other than those associated with mineral extraction, small scale facilities for participatory sport and recreation or other uses appropriate to a rural area. The proposed use cannot be justified in terms of the purposes specified and no exceptional circumstances are apparent in this case and as such would be contrary to Policy 1 of the adopted St. Albans District Plan.'

5/1988/2219 - The Old Riding School, Lye Lane, Bricket Wood. Deemed application - appeal against enforcement order - storage of plant, building materials within the site and building and office use from the building. Withdrawn 14/02/1989

5/1987/2035 - The Old Riding School Upper Lye Lane Bricket Wood - Change of use of building to provide 7 craft units with storage space. DC4 Refusal Decision Date: 19/02/1988 - Appeal lodged: 04/05/1988 - Decision Not Allocated

Reasons for refusal:

1. *Inappropriate use within the Metropolitan Green Belt*
2. *Impact on highway due to increase in employee and visitor traffic*

5/1986/1101 - The Old Riding School Lye Lane Bricket Wood - Erection of four units for use by craft industries. DC4 Refusal Decision Date: 28/10/1986

Reasons for refusal:

1. *Inappropriate use within the Metropolitan Green Belt*
2. *Impact on highway due to increase in employee and visitor traffic*
3. *No provision made for landscaping of the site*
4. *Location of twenty car parking spaces not marked on plans*

5/1986/1452 - The Old Riding School Upper Lye Lane Bricket Wood - Change of use from indoor riding school to use as builders yard with ancillary office accommodation and fabrication. DC4 Refusal Decision Date: 11/12/1986

Reasons for refusal:

1. *Inappropriate use within the Metropolitan Green Belt*
2. *Impact on highway due to increase in employee and visitor traffic*
3. *Location within Amenity Corridor and restriction of use to low intensity leisure activities.*

Evidence Submitted in Support of the Application:

Item 1

Statutory Declarations from Gerald Ivor Kaye and David John Courtnage

Item 2

Tenancy agreements, council tax bills, utility bills and additional information for Units 1, 1a, 1b, 2a, 2b, 2c, 2d, 2e, 2f, 3, 3a, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12a, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

Item 3

Thirteen letters from various businesses currently using some of the units within Horseshoe Business Park:

- Unit 1 (Harley Manufacturing Limited)

- Unit 2A (Walsh Renovations Limited)
- Unit 3 (PAPAA)
- Unit 3a (Spotlite Claims Limited)
- Units 4, 2E, 9, 20 (Direct Business Insurance)
- Unit 5 (Herts Business Solutions)
- Unit 7 (Van Easy Limited)
- Unit 8 (C. Bernardin)
- Unit 8 (Haven Home Support Limited)
- Units 12/14 (Quantum Detection Limited)
- Unit 12a (R G Agencies Limited)
- Unit 17 (Blossom Financial/Just Private Medical)
- Unit 23 (SBM Engineering Limited)

Item 4

Additional evidence:

- Email from the Valuation Office Agency
- Letter from Transportation and Development Dept, St Albans District Council
- Previous ground and first floor plans

REPRESENTATIONS

Publicity: N/A

Expiry Date: N/A

Notifications: N/A

Town / Parish Council: N/A

Consultations: N/A

DISCUSSION

Main Issues:

According to Section 191 of the Town and Country Planning Act 1990:

‘(1)If any person wishes to ascertain whether—

(a)any existing use of buildings or other land is lawful;

(b)any operations which have been carried out in, on, over or under land are lawful; or

(c)any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.’

It goes on to say that:

‘(3)For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a)the time for taking enforcement action in respect of the failure has then expired; and

(b)it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.’

[F3(3A)]In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a)the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,

(b)an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.】

In terms of time limits, section 171B of The Act states that:

‘(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.’

The relevant issue of concern for the current application is whether or not the use of the site as outlined on the Site Location Plan has been in continuous use for 10 or more years as Class B1 (a) office use, in breach of planning condition 5 of permission 5/1994/1088 dated 06/09/1994.

To demonstrate that the uses at the application site have been in breach of Condition 5 of permission 5/1994/1088, the applicant needs to demonstrate that all of the units on the site have continuously been used as offices for ten or more consecutive years.

Certificates of Lawfulness should be considered in accordance with the advice contained within the Planning Practice Guidance which sets out guidance for the National Planning Policy Framework, 2019. The guidance states that the application:

“must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application... 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.”

The guidance states that it is the applicant’s responsibility to provide sufficient information to support an application and continues that:

“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.”

For this application, floor plans of the existing building have been submitted showing that there are office units on the ground floor, first floor and second floor of Horseshoe Business Park.

Item 1

Item 1 of the submitted evidence is signed statutory declarations from Gerald Ivor Kaye and David John Courtnage. The planning statement (para 6.5) states that Mr Kaye has been involved with the management of the property since 1999 and Mr Courtnage has owned the property since 1995. These statements assert that all units of the property have been used as offices for a period of more than ten years prior to the date of the application and no unit has been occupied for any other use during this time period.

They state that business rates have been paid on the units for more than 10 years prior to the date of the application.

The statements acknowledge that there are some gaps in the evidence submitted for each of the units, due to new tenancy agreements not necessarily being issued if the unit is occupied by the same tenant, but it is confirmed that at no time has any one unit been vacant for more than three months at a time.

The declarations also note that there has been some merging and splitting of units and movement of the same tenant to different units within the building over the ten year period.

Item 2

Evidence in the form of tenancy agreements, council tax bills, utility bills and additional information has been submitted for each of the units on the existing floorplans.

As stated in the sworn declarations, there are time gaps in the evidence submitted. It is plausible that this could be due to tenancy agreements not been reissued or short period of vacancy between tenants.

However, on the balance of probability, it is considered that there is enough evidence to indicate that the units on the ground floor and first floor have been in use for ten years as B1 offices and there has been no change to a different use within this period.

The exception to this is the second floor of the property which has been confirmed in an agent email dated 26/11/2019 as Unit 5. The evidence submitted in Item 2 indicates that there was a period in 2011 and 2012 when this Unit/Floor was in use as a private single family residence. This would therefore indicate that Unit 5 on the second floor was not in continuous B1 use within the relevant ten year time period.

Item 3

Although little weight can be given to signed letters as they have not been independently witnessed or verified, on the whole the thirteen letters submitted appear to be consistent with the evidence submitted in Item 2 in terms of the business names occupying various units within the building.

The exception to this is the letter from C. Bernardin which states they currently occupy Unit 8 and have done so since 2017. This conflicts with the letter from Haven Home Support which says they currently occupy Unit 8. However, when assessed against Item 2, it is plausible that there was a typing error as there is evidence of C.Bernardin occupying Unit 18.

The letters also provide some support for the assertion in the sworn declarations that there has been some merging and splitting of units and movement of the same tenant to different units within the building over the ten year period.

Item 4

The email from the Valuation Office Agency states that all 26 units at the application site were brought into the 1995 Valuation List as Office and premises.

The letter from Transportation and Development Dept, St Albans District Council concerns the renaming and numbering of The Old Riding School in 1996 to Horseshoe Business Park. This is stated to include four workshops and twenty offices (nos 6 to 24). The letter states that number 5 has been omitted as it is not included on the plan. Previous ground and first floor plans have been included with this letter.

Other evidence

There is some evidence available to the council to verify that office business rates have been paid by units within Horseshoe Business Park since circa 1997. Records indicate that there are a lot of different accounts on the system and the units appear to have been split and merged over the years. However, this provides some further evidence of the likelihood of office use over the relevant time period.

Office records also show that there has been some enforcement action at the site but this does not relate to the use of the building as offices. Therefore there is no record of enforcement action against the breach of condition 5 of permission 5/1994/1088.

Other considerations

To meet the tests outlined above, it is also necessary to consider whether the use is considered to be B1(a), defined in The Town and Country Planning (Use Classes) Order 1987 (As Amended) as:

Class B1. Business

Use for all or any of the following purposes—

- (a) as an office other than a use within class A2 (financial and professional services),
 - (b) for research and development of products or processes, or
 - (c) for 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 sworn declarations state the use of the property being as offices. Paragraph 6.12 to 6.15 of the planning statement also provides clarification for some of the businesses at the park, advising that they do not provide customer facing services.

In the absence of any contradictory evidence, and on the balance of probability, the offices can be considered to fall into use class B1(a).

Conclusion

A continuous record of the use of all units within the property for a continuous ten year period has not been provided. However, taking all items of evidence together, as well as that provided by council records, it is considered that there is enough evidence, on the balance of probability, to demonstrate that the ground and first floors of the property have been used as B1 offices for a continuous period of ten years, in breach of planning condition 5 of permission 5/1994/1088 dated 06/09/1994.

The evidence supplied for Unit 5 (second floor) indicates that for part of this time period, the unit was in use as a residence and therefore it would not be possible to issue a certificate of lawfulness on this basis.

However, according to section 193(4) of the 1990 Act, a certificate can be issued either for the whole or part of the land specified in the application.

On this basis, it is considered that a certificate of lawfulness can be issued for the ground and first floors only, and not the second floor.

In conclusion, a Certificate of Lawfulness can be issued for the ground floor and first floor of the property on the basis that, on the balance of probability, office use (Class B1 (a)) began more than 10 years before the date of this application and that this office use (Class B1 (a)) in breach of condition 5 of planning permission 5/1994/1088 began more than 10 years before the date of this application, as defined by Section 171B of the Town and Country Planning Act 1990.

Comment on Town / Parish Council / District Councillor / Concern(s): N/A

CONCLUSION

To include justification for recommendation and relevant development plan policies

A Certificate of Lawfulness can be issued for the ground floor and first floor of the property on the basis that, on the balance of probability, office use (Class B1 (a)) began more than 10 years before the date of this application and that this office use (Class B1 (a)) in breach of condition 5 of planning permission 5/1994/1088 began more than 10 years before the date of this application, as defined by Section 171B of the Town and Country Planning Act 1990.

HUMAN RIGHTS CONSIDERATIONS

The following recommendation is made having regard to the above and also to the content of the Human Rights Act 1998

RECOMMENDATION: Permitted Development	Decision Code: S5
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Reasons:

1. A Certificate of Lawfulness can be issued for the ground floor and first floor of the property on the basis that, on the balance of probability, office use (Class B1 (a)) began more than 10 years before the date of this application and that this office use (Class B1 (a)) in breach of condition 5 of planning permission 5/1994/1088 began more than 10 years before the date of this application, as defined by Section 171B of the Town and Country Planning Act 1990.

Informative(s):

1. This determination was based on the following drawings and information: site location plan, existing ground floor plan, existing second floor plan, planning statement ref September 2019/MR/P19-1965, and two sworn declarations received 27/09/2019; additional information for units 1, 1a, 1b, 2a, 2b, 2c, 2d, 2e, 2f, 3, 3a, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12a, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 received 01/10/2019; thirteen signed letters and additional information received 01/10/2019; agent email dated 26/11/2019; and first floor plan received 03/12/2019.

2. The Local Planning Authority has been positive and proactive in its consideration of this planning application. The development improves the economic, social and environmental conditions of the District.

LOCAL GOVERNMENT (Access To Information Act) 1985

Bibliography

<u>Title of Background Documents</u>	<u>Custodian & Tel. No.</u>	<u>File Location</u>
St. Albans District Local Plan Review 1994 adopted November 1994	01727 866100 ext. 2347	Council Offices Civic Centre St Peters Street St Albans, Herts AL1 3JE

Report Writer Signature

Elizabeth Burnham

Date

05/12/2019

AGENT

Mr Michael Ruddock
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Bracknell
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RG12 1LP

APPLICANT

Horseshoe Business Park
C/o Agent

DRAFT CERTIFICATE OF LAWFUL USE OR DEVELOPMENT LETTER

The CITY AND DISTRICT OF ST ALBANS COUNCIL hereby certify that on 02/10/2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged on the plan attached to this certificate **was lawful** within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reasons:-

1. A Certificate of Lawfulness can be issued for the ground floor and first floor of the property on the basis that, on the balance of probability, office use (Class B1 (a)) began more than 10 years before the date of this application and that this office use (Class B1 (a)) in breach of condition 5 of planning permission 5/1994/1088 began more than 10 years before the date of this application, as defined by Section 171B of the Town and Country Planning Act 1990.

Signed



Tracy Harvey
Head of Planning & Building Control

First Schedule

(Development/Use) - Certificate of Lawfulness (existing) - Continued use of the property as B1 (offices)

Second Schedule

(Location) - Horseshoe Business Park Lye Lane Bricket Wood Hertfordshire

NOTES (Not necessary for Refusals)

1. *This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended)*
1. *It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule was lawful, on the specified date and, thus was not liable to enforcement action under Section 172 of the 1990 Act on that date.*
2. *This Certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use, which is materially different from that described or which relates to other land, may render the owner or occupier liable to enforcement action.*
3. *The effect of the certificate is also qualified by the proviso in Section 194 (4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.*
4. *The applicant should be aware that approval under the Building Regulations 2000 may be required. Further information can be obtained from the Council Offices.*

This determination was based on the following drawings and information: site location plan, existing ground floor plan, existing second floor plan, planning statement ref September 2019/MR/P19-1965, and two sworn declarations received 27/09/2019; additional information for units 1, 1a, 1b, 2a, 2b, 2c, 2d, 2e, 2f, 3, 3a, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12a, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 received 01/10/2019; thirteen signed letters and additional information received 01/10/2019; agent email dated 26/11/2019; and first floor plan received 03/12/2019.

The Local Planning Authority has been positive and proactive in its consideration of this planning application. The development improves the economic, social and environmental conditions of the District.