

# Development Management Delegated Decision Report

B/22/0150



SUMMARY OF APPLICATION				
<b>Application Reference</b>	B/22/0150			
<b>Application Type</b>	Certificate of Lawfulness (existing use)			
<b>Proposal</b>	Application to confirm that the existing Use Class E without any restrictions on trading or servicing hours to Unit 2 to be lawful			
<b>Location</b>	Maplin, Alban Retail Park, Grantham Road, Boston PE21 7NN			
<b>Applicant</b>	Summer Estate Holdings Limited c/o Sout, C/O Savills			
<b>Agent</b>	Rhys Govier, Savills			
<b>Received Date:</b>	04-Apr-2022	<b>Consultation Expiry Date:</b>	13-May-2022	
<b>Valid Date:</b>	04-Apr-2022	<b>Statutory Expiry Date:</b>	30-May-2022	
<b>Date of Site Visit:</b>	19-Apr-2022	<b>Extension of Time Date:</b>	N/A	
<b>Objections received?</b>	None.			
<b>5 day notification record:</b>				
	<b>Councillors notified</b>	<b>Date</b>	<b>Response received – date</b>	<b>Ok to continue</b>
<b>Recommendation</b>	Approved and Issue Lawful Development Certificate			
<b>Report by:</b>	Megan Epton			
<b>Date:</b>	30-May-2022			

## OFFICER REPORT

### SITE AND SURROUNDINGS:

The site comprises of a 5000sq m retail warehouse with 3no. individual units which currently house retail brands B&M and Dunelm; Unit 2 is currently vacant. The site is located out of Boston's town centre and on Grantham Road, Boston.

### DETAILS OF PROPOSAL:

The lawful development certificate application seeks to demonstrate and confirm that Unit 2, on and since 31 August 2020, has had a retail use (formerly Class A1) and thus is now



considered to fall within Class E of the 1987 Order as amended following its change in 2020. The evidence submitted with the application is as follows:

- Site Location Plan;
- Planning Statement (5no. Appendices)

### **RELEVANT HISTORY:**

- B/06/0304/89 – FULL – Construction of 3no. retail units with associated garden centre, service yard, access and parking spaces – GRANTED with restrictions on the range of goods.
- B/06/0106/93 – VARIATION – varied Condition 13 of the previous application and a new, Condition 1 was imposed which allowed Class A1 but excluded food and drink except ancillary and complementary to the main non food goods sold.
- B/06/0216/96 – VARIATION - further varied Condition 1 of B/06/0106/93.
- B/15/0191 – VARIATION – further varied Condition 1 of B/06/0216/96.

### **RELEVANT DEVELOPMENT PLAN POLICIES AND DOCUMENTS:**

Section 191 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) allows any person who wishes to ascertain whether “any existing use of buildings or other land is lawful” to make an application to the LPA. If the LPA is satisfied that the appropriate legal tests have been met, it should issue the Certificate.

Section 191 of the Act indicates that the burden of proof lies with the applicant. The relevant test is the balance of probability and local planning authorities are advised that if they have no evidence of their own to contradict or undermine the applicant’s version of events there is no good reason to refuse the application provided that the applicant’s version is precise and unambiguous to justify the grant of a certificate, and in any other case they shall refuse the application.

### **National Planning Practice Guidance (PPG)**

### **CONSULTATION RESPONSES:**

No consultation responses have been received.

### **THIRD PARTY REPRESENTATIONS RECEIVED:**

No third party responses have been received.

### **EVALUATION:**

The certificate of lawfulness is sought to confirm that following the amendments to the ‘Use Class Order’, the site’s A1 (retail) use is now lawfully considered to be (and treated as) unrestricted Class E (commercial, business and service). The application also seeks to confirm that there are no restrictions on trading or servicing hours to the site on the basis that there are “no such restriction conditions attached to the operational planning history of the site”.

The key test is whether, on balance of probability, the evidence submitted by the applicant, clearly indicates that Unit 2 has been used as a 'Class A1' retail unit for a period in excess of 10 years (Section 171B(3) of the 1990 Act), or alternatively, planning permission was granted and lawfully implemented for the use as 'Class A1'. It is also pertinent that the evidence submitted indicates that no restrictions have been placed on the site outlined in red on the location plan submitted with this application. The test should take into account any evidence found by the authority that may contradict or undermine the applicant's evidence.

The evidence submitted within this application includes occupier and specific planning history, land use planning history and lease agreements which are all relevant in proving the past use(s) of the site. They confirm the A1 use of the site has been continuous and uninterrupted (and not abandoned) for a period in excess of 10 years. Although the unit has been empty for periods during this time frame, the empty unit would not be considered to constitute an 'abandoned unit' as the applicant has not specified or claimed that there was ever an intention to abandon the unit's retail use, nor is there any evidence to suggest otherwise.

Regulation 7 of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 states:

*"For the purposes of the Use Classes Order, if a building or other land is situated in England, and is being used for the purpose of one of the following classes which were specified in Part A or B of the Schedule to that Order on 31st August 2020, as—*

- (a) Class A1 (Shops),*
- (b) Class A2 (Financial and professional services),*
- (c) Class A3 (Restaurants and cafes), or*
- (d) Class B1 (Business),*

*that building or other land is to be treated, on or after 1st September 2020, as if it is being used for a purpose specified within Class E (Commercial, business and service) in Schedule 2 to that Order."*

As the Site held a lawful Class A1 use on 31 August 2020, the use of the site is therefore considered as having changed from Class A1 to Class E (as per the above amendment). The key consideration is to now confirm whether the use is unrestricted.

The site was constructed as approved in 1989 under approval B/06/0304/89, with several conditions, one specifically relating to goods restrictions. Several variation of condition applications were submitted following the original approval:

- B/06/0106/95 amended Condition 13 of the original approval to include the sale of brown electrical goods (across all three of the approved units);
- B/06/0216/96 varied condition 1 of B/06/106/93 to allow for class A1 retailing with the exception of a list of goods, for all 3 units.

- B/15/0191 varied condition 1 of B/06/0216/96 to again vary the goods that may be sold.

Although B/15/0191 describes the site as the 'B&M Retail Unit', the view is taken that this most recent amendment to the allowed goods applies to each of the three units within the development. No additional wording was added to the condition to specify the other units were excluded from this amendment and the condition it makes the amendment to historically relates to the goods allowed across all three of the units.

There have been no further planning approvals since the 2015 application that would supersede this existing condition and so therefore, the goods restriction condition of B/15/0191 remains in place. This however, appears to be the only restricting condition relating to the site; there is no evidence of a recent or historical condition that would limit the trading and servicing hours for any of the three units approved under the original application (B/06/0304/89). Thus, the unit is considered to be unrestricted in terms of its trading/servicing hours, with the goods condition of B/15/0191 still in place.

### **CONCLUSION:**

In summary, on the balance of probability test and based on the provided evidence, it is considered that the lawful development certificate should be granted and issued, and the existing Use Class E without any restrictions on trading or servicing hours to Unit 2 is to be confirmed as lawful.

The conditions of B/15/0191 shall be upheld unless otherwise amended in writing by the Local Planning Authority.

### **RECOMMENDATION:**

Approved and Issue Lawful Development Certificate.