
Planning Statement

Application for a Certificate of Lawfulness of Existing Use or Development

Unit 2
Alban Retail Park
Boston
PE21 7NN

Prepared for:

Summer Estate Holdings Limited c/o South Street Capital

Prepared by:

Savills
2 Kingsway
Cardiff
CF10 3FD

Planning Statement

Unit 2, Alban Retail Park, Boston, PE21 7NN



Contents

1.	Introduction	1
2.	Legislative background and guidance	2
3.	Identification of use	5
4.	Presentation of evidence	6
5.	Conclusion	12

Appendices

Appendix 1.0 Site Location Plan

Appendix 2.0 Interest in land

Appendix 3.0 Comet and Maplin leases

Appendix 4.0 Occupier specific planning history

Appendix 5.0 Land use planning history

1. Introduction

1.1. Introduction

- 1.1.1. This Planning Statement ("Statement") has been prepared on behalf of Summer Estate Holdings Limited c/o South Street Capital ("the Applicant"), in support of an application for a Certificate of Lawfulness of Existing Use or Development ("CLEUD" or "Certificate") relating to Unit 2, Alban Retail Park, Boston, PE21 7NN ("the Site").
- 1.1.2. A site location plan is provided at **Appendix 1.0**.
- 1.1.3. As part of good asset management practice, the Applicant is looking to obtain confirmation from Boston Borough Council ("BBC"), as Local Planning Authority ("LPA"), over the lawful use of the Site and the absence of any trading or servicing restrictions to meet the requirements of an incoming tenant.
- 1.1.4. The Applicant is keen to secure the occupation of the Site by the incoming tenant to ensure the vitality and viability of the Alban Retail Park, and to the benefit of its offering, employment and economic opportunities.
- 1.1.5. Accordingly, an application for a CLEUD is submitted to BBC demonstrating the established lawful use of the Site. Considering the recent Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("the 2020 Regulations"), the CLEUD therefore seeks to confirm the lawful use of the Site as unrestricted Class E of the Town and Country Planning (Use Classes) Order 1987 ("the 1987 Order"). Confirmation is also sought that there are no restrictions on trading or servicing hours to the Site.

1.2. Statement structure

- 1.2.1. Given the nature of this application, most of the evidence is included as appendices with the Statement effectively being a 'guide' through, and summary of, the appendices. Accordingly, this Statement is structured as follows:
 - **Section 2:** Identifies the relevant legislative context for the submission and assessment of applications for CLEUDs;
 - **Section 3:** Identifies the use and matters for which confirmation is sought;
 - **Section 4:** Provides, in connection with the various appendices, requisite evidence to demonstrate why the CLEUD can be issued; and
 - **Section 5:** Draws together a summary of the evidence provided and comes to a conclusion.

2. Legislative background and guidance

2.1. Overview

- 2.1.1. This section provides a brief overview of the legislative background and guidance in respect of CLEUDs. It does not seek to be exhaustive but establishes the key principles and requirements of a CLEUD.

2.2. Legislative background and guidance

- 2.2.1. 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.
- 2.2.2. Section 191(2) of the 1990 Act states that operations are considered to be lawful if either no enforcement may be taken (either because the operation does not constitute development or the time limit to enforce as set out in the 1990 Act has passed) and they do not contravene any requirements of an enforcement notice in force. Following the provisions of Section 4 of the Planning and Compensation Act 1991, Section 171B of the 1990 Act contains rolling time limits within which LPAs can take planning enforcement against breaches of planning control. Section 171B(3) of the 1990 Act states that, in the case of a planning breach relating to development other than for a single dwelling house, the ability to take enforcement action ceases after 10 years.
- 2.2.3. If a use has been continuous and uninterrupted (and not abandoned) for a period in excess of 10 years, the use is therefore said to be lawful. Alternatively, if planning permission is granted for a given use and lawfully implemented the use can also be said to be lawful.
- 2.2.4. Section 191(5) of the 1990 Act identifies what information must be specified within a Certificate. It specifies that Certificates should:

"(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 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"

- 2.2.5. To assist with this, Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) ("the 2015 Order") specifies the contents of an application for a CLEUD and how it must be submitted. Applications must be accompanied by:

"(a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;

(b) such evidence verifying the information included in the application as the applicant can provide; and

(c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application."

- 2.2.6. In this case, (a) is provided at **Appendix 1.0**, (b) is presented within this Statement and its various appendices and (c) is provided at **Appendix 2.0**.

- 2.2.7. Applications must be accompanied by sufficient factual information/evidence for a LPA to decide the application. Following the withdrawal of Circular 10/97 (Enforcing Planning Control), guidance about CLEUDs is now contained within the online National Planning Policy Guidance ("NPPG"). The NPPG identifies that an application should include a precise description of what is being applied for (not simply the use class) and the land to which the application relates. This is presented in Section 3 of this Statement. A CLEUD must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a specific use class and where it is within a use class of the 1987 Order, a Certificate must also specify the relevant use class.

- 2.2.8. Paragraph Reference 17c-006-20140306 of the NPPG states 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."

[Emphasis added]

- 2.2.9. From the above it is clear that the onus is on the Applicant to provide sufficient evidence to demonstrate lawfulness and that LPAs should co-operate with applicants if they hold information relevant to the application. Importantly, evidence put forward by the Applicant should be accepted 'at face value' so long as it is "sufficiently precise and unambiguous" and unless the LPA are able to provide evidence to the contrary.

Planning Statement

Unit 2, Alban Retail Park, Boston, PE21 7NN



- 2.2.10. From Paragraph 17c-006-20140306 of the NPPG it is important to note the test is not demonstrating beyond all reasonable doubt but is instead whether it can be demonstrated “*on the balance of probability*”. This represents a significant and highly relevant difference. Whilst the onus remains on the Applicant to provide a level of detail, there remains a requirement for the LPA to take a balanced and pragmatic approach to determining whether the operation is lawful or to provide evidence to the contrary.
- 2.2.11. Issues such as compliance with polices set out within the development plan documents are not to be taken into consideration as the decision is based on a matter of fact and law and not on planning policy grounds.

3. Identification of use and matters sought

3.1. Overview

- 3.1.1. This section provides an identification and explanation of the use and matters for which confirmation is sought.

3.2. Identification of use

- 3.2.1. As the evidence presented within this Statement will confirm, the use of the Site since planning permission was granted in April 1989, and first occupied in September 1989, has been for retail.
- 3.2.2. This CLEUD therefore seeks to confirm the lawful use of the Site is now Class E of the 1987 Order. Prior to the 2020 Regulations, the Site was in use as retail under Class A1 of the 1987 Order. However, it is noted that Regulation 7 of the 2020 Regulations state:

“7. 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.”

- 3.2.3. As the Site held a lawful Class A1 use on 31 August 2020, the use of the Site shall therefore be treated as having changed from Class A1 to Class E. This CLEUD therefore seeks to confirm the lawful use of the Site as unrestricted Class E.

3.3. Trading and servicing restrictions

- 3.3.1. Confirmation is also sought via the Certificate 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.

4. Presentation of evidence

4.1. Overview

- 4.1.1. This section presents evidence demonstrating beyond the test of “*on the balance of probability*” that the Site’s lawful use is retail (now Class E of the 1987 Order), that there are no restrictions preventing the change of use of the Site within Class E (as a result of not constituting ‘development’ under the terms of Section 55(2)(f) of the 1990 Act), nor are there any conditions with regards to trading or servicing hours. The relevant appendices should be cross-referred to as appropriate.

4.2. Summary

- 4.2.1. As identified in section 1 of this Statement, the purpose of this application for a CLEUD is to confirm the lawful use of the Site as part of good asset management practice prior to securing the beneficial occupation by an incoming tenant.
- 4.2.2. To demonstrate this, the Applicant’s case and evidence forms two distinct parts:
- Occupier timeline; and
 - Planning history.
- 4.2.3. Each evidence base will be considered in turn below. Collectively, this evidence presents a case beyond the test of “*on the balance of probability*”.

4.3. Evidence

Occupier timeline

- 4.3.1. To assist the LPA in understanding the nature of the use to which the Site has been put over time, a summary timeline of the occupation of the Site over time is presented at **Table 4.1** below. The supporting evidence is appended at **Appendix 3.0** and **Appendix 4.0**.

Table 4.1: Summary of occupier timeline

Occupier	Type of occupier	Evidence	Period	Appendix
Comet	Electrical goods retailer (Class A1)	Comet lease	29 September 1989 – 28 September 2014	3.1
Maplin	Electrical goods retailer (Class A1)	Maplin lease	19 March 2013 – 18 March 2023	3.2

Planning Statement

Unit 2, Alban Retail Park, Boston, PE21 7NN



4.3.2. The timeline shows the occupiers of the Site since it was constructed have been Comet followed by Maplin. Both these occupiers were electronic goods retailers. The Site is currently vacant.

4.3.3. Comet was the initial occupier of the Site following its construction in 1989. The term of the Comet lease was 25 years from 29 September 1989 to 28 September 2014, albeit it is understood Comet surrendered its lease early. The Permitted User clause within the Comet lease read:

“(12) Subject to the Tenant obtaining all necessary planning and other permissions not to use or permit or suffer the Unit or any part of it to be used or occupied otherwise than for the purpose of the retail sale and/or hire of electrical and gas and electronic goods and appliances and hi-fi equipment and ancillary thereto gramophone records tapes cassettes cartridges films optical and photographic equipment (including agency for printing and developing) watches and clocks together with ancillary offices service department and storage and staff facilities or for such other non-food retail purpose within Class A1 prescribed by the Town and Country Planning (Use Classes) Order 1987 as may first be approved by the Landlord in writing (such approval not to be unreasonably withheld or delayed).”

(Page 15)

4.3.4. A copy of the Comet lease is provided at **Appendix 3.1**. There is no evidence to suggest Comet breached the Permitted User clause at any point.

4.3.5. It is therefore demonstrated that on the balance of probability, the Site traded within Class A1 for the duration of Comet’s occupation.

4.3.6. The Site was subsequently occupied by Maplin. The term of the Maplin lease was 10 years from 19 March 2013 to 18 March 2023. The Permitted User clause within the Maplin lease read:

“means the retail sale of electronic products including (but not limited to), electronic components, cabling, audio and visual electrical goods, computers, components, security products, batteries, power supplies and goods ancillary to these and to electrical products of similar nature, together with ancillary offices or any other non-food use within Use Class A1 of the Town & Country Planning (Use Classes) Order 1987 (as at the date of this deed).”

(Page 3)

4.3.7. A copy of the Maplin lease is provided at **Appendix 3.2**. There is no evidence to suggest Maplin breached the Permitted User clause at any point.

4.3.8. The occupation by Comet and Maplin in the periods identified in **Table 4.1** can also be confirmed through their submission of occupier specific planning and advertisement

applications to the LPA during their respective occupation of the Site. These are summarised in **Table 4.2** below and presented in the corresponding appendices.

Table 4.2: Summary of occupier specific planning history

Applicant	Reference	Description	Decision / Date	Appendix
Comet	B/06/0785/89	Advertisement consent for signage	Granted, 14 December 1989	4.1
	B06/0102/90	Retrospective planning permission for satellite dish antenna	Granted, 8 March 1990	4.2
	B/05/0304	Advertisement consent for signage	Granted, 29 June 2005	4.3
Maplin	B/13/0096	Advertisement consent for signage	Granted, 16 April 2013	4.4

4.3.9. Maplin went into Administration on 28 February 2018. While the exact date of the closure of this store is unknown, all Maplin stores are known to have closed by June 2018. The Site has therefore been closed and vacant since sometime between February and June 2018.

4.3.10. Although vacant, the Site's use for retail is not considered to have been abandoned. The Site firmly holds a retail use and not a 'nil' use.

4.3.11. The timeline described above is helpful context in understanding the nature of the subsequent evidence presented.

Planning history

4.3.12. In addition to the occupier specific planning history identified in **Table 4.1**, a desktop planning history search has identified several planning (and related) applications at the Site relating specifically to land use. These are summarised in **Table 4.3** below with Decision Notices reproduced at **Appendix 5.0**.

Table 4.3: Summary of land use planning history

Reference	Decision / Date	Summary of condition(s)	Appendix
B06/0304/89	Granted, 7 April 1989	1 – Commencement of development 2 – Approved plans 3 – Tree planting scheme 4 – Existing trees 5 – No advertisements	5.1

Planning Statement

Unit 2, Alban Retail Park, Boston, PE21 7NN



		6 – Visibility splays 7 – Roof water 8 – Surface water 9 – Oil and chemical storage tanks 10 – Foul drainage 11 – Permanent structures 12 – Pipe outfalls 13 – Goods restrictions 14 – Space for loading, unloading and parking of vehicles 15 – Details of fences, structures etc. 16 – Outside land	
B06/0106/93	Granted, 24 August 1993	1 – Goods restrictions	5.2
B06/0216/96	Granted, 30 July 1996	1 – Goods restrictions	5.3
B/15/0191	Granted, 22 July 2015	1 – Goods restrictions 2 – Goods restrictions	5.4

4.3.13. Commentary on the key planning history relating to Unit 2 presented in **Table 4.3** is now summarised below:

- Ref. B06/0304/89 (dated 7 April 1989) provided for the construction of three retail units (52,000 sqft gross internal area) with garden centre, service yard, access and parking spaces. This is the original planning permission for the parcel of land on the eastern side of the A52 (Wyberton High Bridge).
- Ref. B06/0106/93 (dated 24 August 1993) subsequently varied condition 13 attached of B06/0304/89 to allow for the sale of brown electrical goods. The effect of this permission is to vary the condition across all three units granted under B06/0304/89.
- Ref. B06/0216/96 (dated 30 July 1996) subsequently varied condition 1 of B06/0106/93 to allow Class A1 retailing, with a number of restrictions. Again, the effect of this permission is to vary the condition across all three units originally granted under ref. B06/0304/89.
- Ref. B/15/0191 (dated 22 July 2015) subsequently varied condition 1 of B06/0216/96 to vary the range of goods that may be sold again. The effect of this permission is understood to have varied the condition across all three units originally granted under ref. B06/0304/89. This is indicated in the Officer's Report to ref. B/15/0445/FULL).

4.4. Commentary

Land use

- 4.4.1. On reviewing the planning history, and with the knowledge the most recent occupier was Maplin (and before that Comet), it is possible to conclude on, and beyond, the balance of probability that the Site's lawful use prior, on and since 31 August 2020 has been retail, formerly Class A1.
- 4.4.2. On review of the above decision notices relating to the planning history there are no conditions which expressly prohibit the Site benefitting from the provisions of Class E of the 1987 Order, as introduced on 1 September 2020 under the 2020 Regulations.
- 4.4.3. The Applicant is aware condition 1 (which has been varied multiple times over the years) looks to restrict the retail goods that can be sold from the Site remains, however, this does not affect the principle of the lawful use now being Class E.
- 4.4.4. It is assumed Unit 2 is controlled by condition 1 from ref. B/15/0191.
- 4.4.5. However, even if it is held that ref. B/15/0191 only applied to the B&M store (Unit 3), and therefore the controlling condition to Unit 2 is condition 1 from the earlier ref. B06/0216/96, this is not considered to affect matters material to the outcome of this Certificate application.
- 4.4.6. The wording of the pertinent condition in both permissions are reproduced below:
- 4.4.7. Condition 1 to B06/0216/96 reads:
- "The property shall be used for Class A1 retailing as defined in the Town and Country Planning (Use Classes) Order 1987, but excluding the sale of food and drink (except ancillary and complementary to the main range of goods sold); clothing; footwear; jewellery; books and magazines; (except ancillary to the main range of goods sold); china, glass and hardware (except hardware ancillary to DIY horticultural activities); pharmaceutical products, sports goods; toys; pet products; audio/visual discs and cassettes; fashion accessories; arts and crafts."*
- 4.4.8. Condition 1 to B/15/0191 reads:
- "The property shall be used for Class A1 retailing but excluding food and drink (except ancillary and complementary to the main range of goods sold), clothing, footwear, jewellery, books, magazines (except ancillary to the main range of goods sold), china, glass and hardware (except hardware ancillary to DIY horticultural activities), pharmaceutical products, sports goods, pets, toys, CDs, fashion accessories and toys and crafts."*
- 4.4.9. Notwithstanding this uncertainty, this is not considered material to the purpose of this Certificate. Neither of these conditions (and whichever shall apply to Unit 2) expressly

prohibited the Site becoming Class E on 1 September 2020. It is therefore concluded that there are no conditions preventing the former Class A1 becoming Class E. On the basis of the above commentary, the planning history indicates a Class E use of Unit 2 is lawful.

Trading and servicing hours

- 4.4.10. Having reviewed the conditions across the operational planning history relevant to the Site (as presented in **Table 4.2** and **Table 4.3**) there are no conditions restricting any trading and servicing hours at the Site. Confirmation is therefore sought within the Certificate that a Class E use from the Site may lawfully trade and be serviced 24 hours a day, seven days a week, 365 days a year.

5. Conclusion

5.1. Conclusion

- 5.1.1. This Statement has been prepared by Savills on behalf of the Applicant in support of an application for a CLEUD under Section 191 of the 1990 Act. The application is part of an asset management exercise by the Applicant to confirm the lawful use of the Site to facilitate the beneficial occupation of the Site to a prospective incoming tenant.
- 5.1.2. The CLEUD seeks to establish that the lawful use of the Site as Class E of the 1987 Order.
- 5.1.3. The evidence presented within this Statement comprises two parts, being:
- Occupier timeline; and
 - Planning history.
- 5.1.4. The evidence presented confirms beyond the balance of probability that the lawful use of the Site prior, on and since 31 August 2020 has been retail, formerly Class A1, and thus is now considered Class E of the 1987 Order. The evidence also identifies the planning history which confirms that there are no conditions controlling trading and servicing hours at the Site.
- 5.1.5. With the test set out in Paragraph 17c-006-20140306 of the NPPG being whether the use can be demonstrated “*on the balance of probability*”, the evidence presented goes beyond this minimum requirement. It is concluded the evidence provided is sufficiently robust to demonstrate the Certificate may be issued.
- 5.1.6. In accordance with Section 191(4) of the 1990 Act the LPA has been provided with sufficient information to satisfy them of the lawfulness at the time of the application of the use to issue the CLEUD.