

DELEGATED OFFICER REPORT

Site Address: Rothery House, Waterberry Drive, Waterloooville, PO7 7XX
Proposal: Application for Certificate of Lawfulness relating to existing use of Rothery House under use class B8 storage and distribution (with ancillary B2 offices, showroom and manufacturing)
Application Type: Certificate of Lawfulness
Application No: APP/24/00624 Expiry Date: 24/09/2024
Applicant: Mr Rothery
Rothery Property Partnership
Agent: Mr Charles Case Officer: Selina Donophy
Aardvark Legal Services
Limited t/a Aardvark Planning
Law
Ward: Waterloo

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 **Site Description**

This application site comprises an industrial unit known as Rothery House which is located on the West side of Waterberry Drive, Waterloooville. To the south of the building is a car park and the area is commercial in nature, with several industrial and commercial buildings located within the business park.

2 **Planning History**

93/50730/001 - Non-illuminated Logo sign on East elevation., PERM,
APP/13/01107 - Erection of 2 No. 6m high and 1 No. 8m high flag poles.,
PERM,18/12/2013 12:19:35
APP/14/00034 - Display of 3 No. flag advertisements from existing flag poles.,
PERM,03/03/2014

3 **Proposal**

Application for Certificate of Lawfulness relating to existing use of Rothery House under use class B8 storage and distribution (with ancillary B2 offices, showroom and manufacturing)

4 **Policy Considerations**

None - Not relevant to Section 191 Certificate of Lawful Use or Development applications. Instead the proposal must be determined in accordance with the provisions of the Town and Country Planning Act 1990; having due regard to relevant guidance set out in Planning Practice Guidance, Lawful development certificates, 2014

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Councillor Gwen Robinson

No comments received

Councillor Peter Wade

No comments received

Councillor Ryan Brent

No comments received

Property Services Manager

The current planning use reflects the ground lease in place with the council, which was put in place to promote the economic development of the borough through manufacturing. The Property & Asset Management Team at Havant Borough Council would like to remind the applicant that the council as landlord will also need to consent to the change of use (a separate application) irrespective of the planning decision under this application

6 Legal considerations

7.1 This application is a Section 191 application for a Lawful Development Certificate which seeks to determine whether the use of the site as a storage and distribution facility is lawful. due to the site being in use over the past 10 years

7.2 Planning Policy Guidance (PPG) in relation to Lawful Development Certificates advises that the applicant is responsible for providing sufficient information to support an application and the PPG states:

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

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.

7.3 The PPG goes on to state that:

A 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. Planning merits are not relevant at any stage in this particular application or appeal process.

- 7.4 The determination of this application therefore turns on the facts of the case and interpretation of the relevant planning law legislation and case law. The Certificate is sought under Section 191 of the Town and Country Planning Act 1990. In this case the requirements are as follows:

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land 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.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

- 7.5 It is therefore necessary to consider whether on the balance of probability the uses applied for have been demonstrated over the relevant 10 year period. The following evidence as listed below has been supplied by the applicant.

- 7.6 List of evidence provided by the applicant :

Statutory declaration signed by Robert Rothery dated 25.07.2024

Land registry location plan

Supporting information including floor plans and 'About us' page taken from the company website (undated)

Business rates invoice dated 13.03.2024

Commodity invoices dated 2011,2012,2013,2014,2015,2017,2018,2019, 2020. These list purchase history of items acquired from 'H&N Sport' by John Rothery Wholesale .

Invoices dated 2012-2024 for products sold by John Rothery Wholesale to 'Portsmouth Gun Centre LTD'

- 7.7 Whilst some of the evidence provided does not evidence use of the site for storage and distribution purposes , it is considered that the invoices provided show evidence of items being acquired externally by John Rothery Wholesale and then distributed onward as evidenced in the invoices to Portsmouth Gun Centre .

- 7.8 The Council has reviewed the submitted documentation and is satisfied that the invoices submitted provide evidence of both storage and distribution uses at the site over a 10 year period alongside the submitted Statutory Declarations provided.

8 Conclusion

- 8.1 The use of the site for storage and distribution purposes is considered to have been established over the past 10 year period as evidenced by the documentation provided with this Lawful Development Certificate application. Therefore, a Lawful Development Certificate can be issued in accordance with Section 191 of the Town and Country Planning Act 1990. The Council's Legal Section concur with this recommendation.
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9 RECOMMENDATION:

That the Head of Place be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/24/00624

FIRST SCHEDULE:

This certificate relates to the following development:

Application for Certificate of Lawfulness relating to existing use of Rothery House under use class B8 storage and distribution (with ancillary B2 offices, showroom and manufacturing) as described in the written particulars, plans and other documents submitted with your application received on 30 July 2024.

SECOND SCHEDULE:

This certificate relates to land at Rothery House, Waterberry Drive, Waterloooville, PO7 7XX as shown edged red on the submitted Location Plan received 30 July 2024.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 191 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.

- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) The effect of the certificate is also qualified by the provision in section 191(6) of the 1990 Act (as amended), which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.
- (5) Your attention is drawn to the attached information regarding your right to appeal to the Ministry of Housing, Communities and Local Government if you are aggrieved by the Council's decision.