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Mr Graham Speller
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Submitted via Planning Portal Ref: PP-11896848

17 February 2023

Dear Mr Speller

**UNITS 3 & 4, WELLINGTON RETAIL PARK, HAMBLETON ROAD, PO7 7UL
APPLICATION UNDER SECTION 192 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
TO CERTIFY THAT THE PROPOSED USE OF THE UNIT AS A GYM OR CAFÉ WOULD BE LAWFUL**

We write on behalf of our client, Corona Vulcan Wellington Limited ('the Applicant'), to apply for a Certificate pursuant to Section 192 of the Town and Country Planning Act 1990 (as amended), to certify that the proposed use of Units 3 and 4, Wellington Retail Park in Waterloooville ('the Site') as either a gym use or a cafe use within Class E, would be lawful.

In accordance with the Town and Country Planning (Development Management Procedures) Order 2015, the application comprises the following:

- This Covering Letter, dated 17 February 2023;
- The completed application form, dated 17 February 2023;
- Planning Permission Ref. APP/13/01233; and
- Site Location Plan, Drawing Ref: 'ref. 216-PL3-1.P1'.

The application has been submitted via the Planning Portal (Ref: PP-11896848) and the requisite fee of £117.00 has been calculated in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications, Request for Site Visits) (England) Regulations 2012 (as amended) and paid via the Planning Portal.

The Application Site

The Site comprises Units 3 and 4, Wellington Retail Park, located within Waterloooville Town Centre. Wellington Retail Park comprises three separate terraces of retail units located either side of Hambledon Road, to the north of Maurepas Way (A3), the majority of which are within the Waterloooville Town Centre boundary. Operators at the Park include Sainsbury's, TK Maxx, M&S, SCS and Home Bargains amongst others. The Retail Park therefore constitutes a key part of the Town Centre retail offering. The remainder of the Town Centre is located to the south of Maurepas Way (A3), and comprises a more traditional town centre layout with small units situated in a linear pattern along main high streets.

Units 3 and 4 are located between B2150 Hambledon Road opposite the Sainsburys store, and immediately north of the Food Warehouse and Home Bargains units. The terrace comprises three units, occupied by Jollyes (Unit 4), Halfords (Unit 3), and Dreams (Unit 3A).

Relevant Planning History

The units were originally approved under planning permission reference 88/05241 dated 1988. Condition 15 attached to the permission restricted the subdivision of the units, and Condition 21 restricted the range of goods that could be sold. There were no restrictions in respect of opening hours.

In April 2002 Planning Permission reference 02/50241/007 approved the variation of Condition 21 to widen the range of goods that could be sold. The decision notice stated that this permission only related to Condition 21, with all other conditions of the original permission remaining in place.

More recently Planning Permission reference APP/13/01233 ("the 2014 permission") was granted on 5 February 2014 for the removal of Condition 21 on the basis that the units are now located within the Town Centre boundary. The permission was issued subject to a single condition referencing the Location Plan. The permission did not contain any reference to the conditions of the original permission, nor seek to retain any of them. A copy of this permission is included with this application.

The 2014 permission is therefore the extant planning permission for the Site, and supersedes all previous planning permissions relating to Units 3 and 4. The permission does not include any conditions precluding the subdivision or amalgamation of units. Nor does the permission contain any conditions removing the flexibility within Class E, i.e. stating that it must remain in retail use. Therefore, the lawful use of the units is unrestricted Class E.

Definition of Development

Section 55 of the Act sets out the definition of "development". Part (1) defines "development" for the purposes of planning legislation. It states that "development" means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

Part (2) outlines that the use of land shall not be taken for the purposes of this Act to involve development of the land; Part (2) f) confirms:

f) "in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class".

Part (2) a) confirms:

a) "the carrying out for the maintenance, improvement or other alternation of any building of works which – (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building"

The legislation clarifies that the use proposed in this application would not constitute development, therefore planning permission is not required.

LAWFUL NATURE OF THE PROPOSED USE

It is clear that the established use of the premises at Unit 3 and 4 Wellington Retail Park is Class E retail. This is confirmed by the planning history and lawful occupation of the premises by two retailers – Halfords and Jollyes.

The Town and Country Planning (Use Classes) Order 1987 (as amended) sets out Use Classes for the purposes of planning legislation. On 21 July 2020, Statutory Instrument 2020 No. 757 was laid before parliament by the Government. It comprised a number of changes to the Town and Country (Use Classes) Order 1987. The changes outlined within the Statutory Instrument became effective on 1 September 2020 and included the creation of a new 'Commercial, Business and Service' use class, Class E, under Part A of Schedule 2.

As identified by Part A (a) of the Schedule, *"the retail sales of goods"* fall within Class E of the Use Classes Order, as does *"for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public"*, as confirmed in Part A(d). The proposed operation of Units 3 and 4 as a gym would be considered to fall under the *"for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public"* use as confirmed in Part A(d) of the Schedule.

Additionally Part A (b) of the Schedule, *"for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises"* also falls within Class E. The proposed operation of Units 3 and 4 as a café would be considered to fall under *"the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises"*.

As stated within the Government's Explanatory Memorandum accompanying the recent Use Class Order amendments *"Changes to another use, or mix of uses, within this class do not require planning permission. Bringing these uses together and allowing movement between them will give businesses greater freedom to adapt to changing circumstances and to respond more quickly to the needs of their communities"*.

Given the lawful use of the building is within Class E, confirmation is sought that the proposed use of the building within another use within Class E does not amount to development. In this regard, Article 3(1) of the Use Classes Order sets out that:

"Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land".

This is consistent with Part (2) f) of Section 55 of the Act, which sets out that use of a building and land for a purpose within the same use class does not amount to 'development' and does not require planning permission. The proposal will enable use of the units as a gym and / or a cafe. The proposed uses fall within Class E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. From a review of the 2014 Permission, which remains the lawful operational consent related to the premises, it is evident that there are no conditions that prevent the use moving between Class E(a), Class E(b), and Class E(d).

As set out above, the 2014 permission did not condition nor limit the use of either unit to retail only or remove the ability to change use within the Use Class Order.

In light of the above it is therefore clear that the existing and proposed use of the units fall within the same Use Class, Class E and therefore can be used for *"for indoor sport, recreation or fitness, not involving motorised vehicles or firearms,*

principally to visiting members of the public” and / or “for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises” within this use class without planning permission.

It follows that the proposed change to the use of Units 3 and 4 do not amount to development, and therefore does not require planning permission, as set out in (2) f) of Section 55 of the Act. We therefore respectfully request that the Council issues a Certificate, under Section 192(1)(a) of the Act, confirming the above.

SUMMARY AND CONCLUSIONS

This application seeks to certify that the proposed use of Units 3 and 4, Wellington Retail Park, as a gym or café within Class E would be lawful.

The existing use of the floorspace at the Site is for ‘retail’ (formerly Class A1). The use classification of this operation now falls within Class E of the Use Classes Order. The 2014 Permission, which controls the permitted use of the floorspace, does not remove the provisions of the Use Class Order, and there are no other restrictions relating to the use of either unit.

Section 55(2)(f) of the Principal Act is explicit that moving between operations within the same use classification does not constitute development of land. It follows that such operations do not require planning permission. In light of the above, we respectfully request that the Council issues a Certificate, under Section 192(1)(a) of the Act.

We would be grateful if the Council could confirm that our application is completed and will be validated shortly. However, if you do have any queries or require any additional information, please do not hesitate to contact Harry Manners (harry.manners@montagu-evans.co.uk) or Lucy Turner (lucy.turner@montagu-evans.co.uk) at these offices in the first instance.

Yours sincerely,



Montagu Evans LLP

Enc.