
Site Address: Office BG05 (Ground Floor), Arena Business Centre,
Langstone Gate, Solent Road, Havant

Proposal: Application for Certificate of Lawfulness relating to proposed use as an office within use class B1(a) by an app-based ride hailing service for private hire vehicles, for administrative purposes only, whereby no taxis or chauffeurs/drivers, and no customers call at the premises apart from, in the case of drivers, for their initial interviews or for subsequent ad hoc meetings.

Application No: APP/20/00040 Expiry Date: 15/04/2020

Applicant: Ms Hart
Ola UK

Agent: Miss N Lovell Case Officer: Denise Sheath
JLL

Ward: St Faiths

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

1 Site Description

Office BG05 (Ground Floor), Arena Business Centre, Langstone Gate, Solent Road, Havant

2 Planning History

97/56621/001 - Installation of no 5, 1.75m beam towers and no 3, 4m high camera poles for CCTV security system, PERM,20/02/1998

06/56621/002 - Crown reduction to previous reduction points of Poplar tree (T3 of TPO 1282)., PERM,27/07/2006

07/72126/000 - Display of 2No. non-illuminated signs on ground floor and top floor., PERM,30/04/2007

08/72126/002 - Display of non-illuminated fascia sign to north west corner of building., PERM,14/05/2008

APP/16/01036 - Construction of drive through Class A3 unit , WD,23/03/2017

3 Proposal

Proposal

The application for a Certificate of Proposed Lawful Use is to establish whether the operation of a app based ride hailing service for private hire vehicles, for administrative purposes only whereby no taxis, chauffeurs/drivers and no calling customers, could take place within a B1 office and would not constitute a material change of use.

In support of the application, a covering letter states that an app based ride hailing service for Private Hire Vehicles (PHV) is detailed as follows:

- A user downloads the smartphone app and sets up an account using a debit or

credit card

- The user enters their trip details and reviews the fee quotations provided based on the proposed route and type of vehicle.
- Once a quotation is accepted, the trip is confirmed by a driver. No manual intervention from the driver or passenger is required with the exception of each party accepting the fare quotation or ride request. Unlike in traditional PHV operations, no 'despatching' is required from a call handler or coordinator by virtue of Ola's servers and the apps used by driver and passenger.
- The driver's app guides the driver to the collection point by GPS.
- The passenger enters the vehicle and is taken to their end destination.
- On completion of the trip, the fare is automatically deducted from the customer's credit / debit card.

The agent advises that the above operation does not require the input of any third parties. A traditional PHV operation requires a despatch office within which a call handler takes calls from members of the public and despatches cars to carry out pre-booked rides. Many such offices also include a public-facing office into which members of the public can visit in order to book trips on an ad hoc basis. To facilitate this, PHVs generally congregate at or in the area around these offices so as to be in a position to accept rides booked at short notice from members of the public.

Further, the Ola model does not require a physical presence in which to house a call handler as all journey are booked via Ola's app. Similarly, drivers are routed to customers via the app. Drivers do not congregate at a despatch office to accept ad hoc bookings as customers are not able to access a booking office and all bookings are taken through an app. Occupation of the premises will be within normal office business hours of approximately 8am to 6pm Monday to Friday.

Ola advise that the premises are required in Arena Business Park, Havant for 2 reasons:

- 1) A B1 business premises which to carry out all bookings and journeys, made for administrative, monitoring and legal purposes; marketing; general administration and one off meetings.
- 2) For the licencing function of providing an address, a premises is needed

The agent states there would be no requirement for drivers to visit the premises on a regular basis. New drivers would visit the site on a one-off basis by means of appointments, the frequency and intensity of which would be ancillary to the main use of the premises as a B1 office use. The frequency and intensity of visits would be in line with and proportionate to the normal operation of a B1 office which may include the interviewing of staff, business meetings and staff training.

4 Policy Considerations

Town and Country Planning Use Classes Order 1987 (as amended)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Not required

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 0

7 Assessment:

The application is an application for a certificate of proposed use of a room in a building whose current lawful use is B1(a) office use (not within use class A2) of the Town and Country Planning Use Classes Order 1987 (as amended) to use as an office for an app based ride hailing service for Private Hire Vehicles (PHVs) by a company called Ola UK Private Limited.

The company appears to operate in a similar manner to Uber cabs and they do not require a despatch office for call handling as a normal PVH company would do which could result in taxis and potential customers calling at the office because they are app based. The covering letter with the application states that the office is required for the normal activities that take place in an office such as record keeping, administration, marketing, one off meetings and interviews.

Article 3(6) of the Use Classes Order sets out uses which are considered to be sui generis uses and use for a taxi business or business for the hire of motor vehicles is a sui generis use at (6)(f) of that article. However, this presupposes that the use would result in the usual activity associated with such a use such as the calling of customers and taxis to the premises.

In order to assess whether the proposed use applied for would constitute a material change of use, it is necessary to consider whether the way the business would operate would fall within use class B1(a) or whether it would be a sui generis use. There does not appear to be any case law on these app based services and DCP on-line does not cover them either, however, regard has been had to an appeal decision which is useful. This was for a lawful use certificate for a private hire operator in London in 2016. Whilst the Inspector dismissed the CEU appeal this was because it was for an existing use and they could not show 10 years continuous use for B1(a) use but some of the Inspector's comments are relevant. The pertinent paragraphs are 4, 8 and 9 and in particular the second half of paragraph 8 where the Inspector acknowledges that a taxi firm (or any other firm) could apply to use the premises as a B1(a) office.

From this appeal decision, it is considered that if the business operates in the way that has been described then this use would be an office use within B1(a) and would be lawful such that a certificate could be granted. However, whilst the LPA cannot impose conditions on the grant of a certificate, it can describe the use tightly making reference to no taxis or customers calling at the premises such that if

the activity strays from what is described, the use would then cease to be lawful so that an application for permission could then be invited or enforcement action could be taken if it is considered that demonstrable harm is being caused.

To that end the description of the proposed development has been amended accordingly to

Use as an office within use class B1(a) by an app-based ride hailing service for private hire vehicles, for administrative purposes only whereby no taxis or chauffeurs/drivers, and no customers call at the premises apart from, in the case of drivers, for their initial interviews or for subsequent ad hoc meetings.

Conclusion:

Based on the information provided and explained by the applicant, it is considered that the proposed operation of the private hire operator as described does not constitute a material change to the use as an office as B1(a) for the development as described in the Description. Therefore, planning permission will not be necessary and a Certificate of Proposed Lawful Use can be granted.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/20/00040 subject to the following conditions

FIRST SCHEDULE:

This certificate relates to the following development:

Application for Certificate of Lawfulness relating to proposed use as an office within use class B1(a) by an app-based ride hailing service for private hire vehicles, for administrative purposes only, whereby no taxis or chauffeurs/drivers, and no customers call at the premises apart from, in the case of drivers, for their initial interviews or for subsequent ad hoc meetings as described in the written particulars, plans and other documents submitted with your application received on 16 January 2020.

SECOND SCHEDULE:

This certificate relates to land at Office BG05 (Ground Floor), Arena Business Centre, Langstone Gate, Solent Road, Havant as shown edged red on the submitted Location Plan received 16 January 2020.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 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 192 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 192(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 matter relevant to determining such lawfulness.
- (5) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.