

Planning Department
Havant Borough Council,
Public Service Plaza,
Civic Centre Road,
Havant, PO9 2AX

By email: planning.development@havant.gov.uk

29 July 2024

Dear Sirs

Application for Certificate of lawfulness for existing use of Rothery House, Waterberry Drive, Waterloooville, PO7 7XX ('the Property')

We are submitting this application on behalf of our client The Rothery Property Partnership, the leaseholder of the Property above, which is registered at the Land Registry under title number [REDACTED]

On 19 December 2011 our client purchased an assignment of the original lease of 125 years term commencing on 20 July 1988, with Havant Borough Council as the freeholder. A copy of the leasehold register and title plan is enclosed - see Exhibit RR1 to statutory declaration of Robert [REDACTED] Rothery dated 25 July 2024.

Our client informs us that the Property was originally built for a group of three companies and then over time, but before our client's occupation, it became primarily used as pet equipment wholesale warehousing.

John Rothery (Wholesale) Co Ltd is part of a group of four companies of which Bisley Limited, Parker-Hale Limited and John Rothery & Co Ltd are non-trading. The group moved their headquarters from Petersfield to the Property 17 February 2012, to accommodate the growing business needs of the group.

As described in the statutory declaration of Robert Rothery dated 25 July 2024 and enclosed with this covering letter, the Property has been used primarily for storage and distribution purposes over the last 12 years, with ancillary offices, a showroom and a small amount of manufacturing. A summary of the use of the building can be found on the promotional video uploaded 10 July 2013 to the John Rothery Wholesale website's 'About Us' page at [<https://www.bisley-uk.com/index.php?pg=aboutus&>]. This in support of and subordinate to Robert Rothery's statutory declaration.

We consider that the Property is in lawful use under use class B8 storage and distribution (with ancillary B2 offices, showroom and manufacturing), and this use has subsisted since February 2012 being more than 12 years ago.

The basis for making the decision on the certificate application is set out (as you will be aware) in The National Planning Practice Guidance ("NPPG") provides as follows (insofar as is material to this application):

'How is a lawful development certificate obtained and what does it mean?

Anyone can apply to the local planning authority to obtain a decision on whether an existing use or development, or a proposed use or development, is lawful for planning purposes or not.

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

*The key statutory framework for such applications and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 ("the Act").
[...]*

Paragraph: 002 Reference ID: 17c-002-20140306
Revision date: 06 03 2014

'What information must accompany an application for a lawful development certificate?

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. There is a different application form for each type of certificate, but either type must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application, along with the relevant application fee. Application forms can be obtained from the local planning authority and can be completed by the applicant or someone working on their behalf.

An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.'

Paragraph: 005 Reference ID: 17c-005-20140306
Revision date: 06 03 2014

'Who is responsible for providing sufficient information to support an application?

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.

[...]

Paragraph: 006 Reference ID: 17c-006-20140306

Revision date: 06 03 2014

The onus of proving the lawfulness of an existing use rests with the applicant. The Courts have held that the relevant evidential test is 'the balance of probability' (see, for example *Gabbitts v Secretary of State for the Environment* [1985] JPL 630) i.e., as to the application, that it is more likely than not that the lawful use is the use stated in the application. This is the legal basis upon which the application must be determined by the Council.

It is submitted that the applicant's evidence as set out in the statutory declaration of Robert [REDACTED] [REDACTED] Rothery is sufficiently precise and unambiguous to show 10 years use as B8 distribution (with ancillary B2 offices, showroom and manufacturing.)

Accordingly, the certificate is requested to be granted without delay.

Yours faithfully



Sebastian Charles

For and on behalf of Aardvark Planning Law

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Enclosures

Statutory Declaration of Robert [REDACTED] Rothery made 25 July 2024 with Exhibits:

- Exhibit RR1 Register and plan for title [REDACTED]
- Exhibit RR2 Illustrated floor plans for Rothery House.
- Exhibit RR3 Screenshot of John Rothery Wholesale “About Us” page.