

DELEGATED OFFICER REPORT

PROPOSAL	Application for Lawful Development Certificate for the completion of the second phase of the warehouse and distribution building approved under outline consent APP/15/00732 and reserved matters application APP/15/01156, as amended by NMA APP/16/01114, to provide an additional 6,012 sqm of B8 floorspace.
LOCATION:	Unit 2, Dunsbury Park, Fitzwygram Way, Havant, PO9 4EE
REFERENCE NO:	APP/25/00709
APPLICANT:	Fat Face Ltd
APPLICATION TYPE:	Lawful development: Proposed use
CONSULTATION EXPIRY DATE:	
APPLICATION EXPIRY DATE:	03/11/2025
WARD:	Leigh Park Hermitage
SUMMARY RECOMMENDATION:	Grant a Certificate of Lawful Development

1. Site Description

- 1.1 The Dunsbury Hill Farm site (DHF) comprises approximately 20 hectares of land located to the northwest of Leigh Park, which is a strategic site under policy CS18. It lies to the east of the A3M and Junction 3 with Hulbert Road, from which it is separated by tracts of woodland. Protected species are present within and adjacent to the site.
- 1.2 The access road (now Fitzwygram Way) linking Hulbert Road and Calshot Road has been constructed in accordance with the details approved under the original outline consent for the whole site, APP/12/00338. This outline consent has subsequently been amended, most recently by APP/17/01324.
- 1.3 This application relates to plot 2, which formed the first phase of development and was constructed under Reserved Matters application APP/15/01156 for Fat Face as a B8 unit comprising 18,037sqm floorspace. The unit is located on the south side of Fitzwygram Way and is a two-bay building constructed of pale cladding with a darker grey feature banding at high level. It has two vehicular access points, one at the eastern side to the service yard; and one to the west to the car park located at the front of the unit. The land slopes down to the south, such that the building is set lower than Fitzwygram Way and the landscaped road frontage.
- 1.4 The unit has been vacant since late 2024. Notably the Reserved Matters application, APP/15/01156, approved a 3-bay building, but only 2 bays have been constructed as phase 1; the third bay under phase 2 has never been constructed. This application seeks confirmation that it would be lawful to implement the remaining third bay, amounting, to an additional 6,012sqm of B8 floorspace, at any time without need for further planning permission or discharge of condition.

2. Planning History

The original outline consents:

APP/12/00338 - Hybrid planning application comprising a part outline application relating to development for employment uses and a hotel with conference facilities and a part detailed application for a new access link road with bus gate to Woolston Road; together with landscaping, infrastructure and associated works. Permitted 19/02/14.

Condition B6 specified a range of uses: 61,779sqm comprising a range of Classes B1, B2 & B8, with the B8 component not exceeding 20% (12,356sqm); and up to 5574sqm of a hotel with conference facilities.

APP/15/00732 - Variation of Condition B6 of Planning Permission APP/12/00338 to change the maximum B8 floorspace from 12,356 square metres (20%) to 18,534 square metres (30%). Permitted 01/10/2015.

APP/17/01324 - Variation of Condition B6 of Planning Permission APP/15/00732 to remove restriction on proportion of B8 floorspace allowed within the Dunsbury Park development, and thus provide for a maximum mixed use floor space of 61,779sqm within Classes B1, B2 and/or B8 of the Use Classes Order 1987 as amended. Permitted 13/12/18.

Officer comment: *APP/17/01324 represents the most recent S73 application for the entire consent, and should be regarded as the base outline permission against which reserved matters applications are now being submitted.*

History relevant to Plot 2

APP/15/01156 - Approval of Reserved Matters in respect to Plot 2 Phase 1 of outline application APP/15/00732 (new employment uses, hotel and access road) comprising construction of B8 warehouse and distribution building (18,037 sqm) to be constructed in 2 phases, with a maximum height not exceeding the 42m AOD contour (the design for plot 2 incorporating revision to previously approved parameter plan forming part of the Environmental Statement dated March 2012). Permitted 23/12/2015.

APP/15/01212 - Display of 5No. externally illuminated fascia signs and 1No. internally illuminated fascia sign. Consent Granted 24/03/2016.

APP/16/01114 – Application for non-material changes to Planning Permission APP/15/01156 relating to doors, sprinkler tanks, windows, fence height and generator. Permitted 21/11/2016.

Discharge of condition applications

The LPA has records that the following conditions have been discharged:

Under the original outline consent APP/12/00338: Request to discharge conditions A5, A10, A11, A12, A13, A14, A16, A17, A18, B4 and B10 (05.01.16)., PERM,19/02/2014

APP/14/00270 - Discharge of Conditions A1 (i)c and A1 (ii), A17 and A18 of Planning Permission APP/12/00338., PERM,25/03/2014

APP/14/01000 - Partial discharge of Condition A16 of Planning Permission APP/12/00338 in respect to access road only, PERM,12/03/2015

APP/15/00239 - Application for Discharge of Condition No's 10,11,12,13,14 and 16 relating to Planning Permission APP/12/00338., PERM,10/06/2015

APP/15/00478 - Discharge of Condition No/s A1, A2, A3, C2 and C3 of Planning Permission APP/12/00338 in respect to the access road only., PERM,06/08/2015

APP/15/00676 - Discharge of Condition Nos. A8, A9 and C2 of Planning Permission APP/12/00338. PERM,06/08/2015

Other current application:

APP/25/00680 – Change of use from storage and distribution warehouse (B8) to general industry (B2)

3. Proposal

Application for Lawful Development Certificate for the completion of the second phase of the warehouse and distribution building approved under outline consent APP/15/00732 and reserved matters application APP/15/01156, as amended by NMA APP/16/01114, to provide an additional 6,012 sqm of B8 floorspace.

This is a Section 192 application for a Lawful Development Certificate to establish whether the proposed construction of the additional floorspace of 6,012sqm would be lawful under the Town and Country Planning Act 1990.

4. Legislation

Town and Country Planning Act 1990

5. Statutory and Non Statutory Consultations

None required for this application

6. Publicity and Community Involvement

Not required for Lawful Development Certificate applications.

Number consulted: 0

7 Planning Considerations

7.1 This application has been submitted as S192 application to establish whether the proposed construction of the additional floorspace of 6,012sqm would be lawful under the Town and Country Planning Act 1990. Firstly, it should be considered whether the development under outline consent APP/15/00732 and reserved matters application APP/15/01156, as amended by NMA APP/16/01114 has lawfully begun and the permission remains extant.

7.2 Section 191(2) of the Town and Country Planning Act states that 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.

- 7.3 No Enforcement Notice has been served for this site, so (b) is not relevant. Therefore, this application falls to be assessed against criteria (a) above.
- 7.4 The amended outline application for Dunsbury Park, APP/15/00732, increased the proportion of B8 across the site to 30% i.e. 18,534sqm in October 2015. Following this Sec 73 application successfully varying the outline consent, Reserved Matters application APP/15/01156, was able to be permitted which sought 18,037sqm of B8 warehousing and distribution floorspace in December 2015. At the time of construction therefore the relevant consents for unit 2 were APP/15/00732 and APP/15/001156.
- 7.5 To be considered lawful (i.e. no enforcement action may be taken) the development needs to be constructed in accordance with the approved plans and be in compliance with all relevant conditions. The relevant conditions will be those in effect at the time compliance was required. For conditions with ongoing effect it will be those imposed under the subsequent Sec 73 outline consent, APP/17/01324, which further varied condition B6 to remove any restriction on the amount of B8 floorspace.
- 7.6 Two of the approved bays were constructed following the grant of reserved matters in December 2015 and the building was first occupied in late 2017. Therefore, the time limit conditions and submission of reserved matters details of the outline consent APP/15/00732 were complied with appropriately. Under Section 56 of the Town and Country Planning Act a material start has therefore occurred on site and the permissions are considered extant.
- 7.7 From a review of the discharge of condition decision notices that have been issued, see planning history section above, it is evident that all of the pre-commencement conditions on APP/15/00732 were appropriately discharged by August 2015 at the latest. This pre-dates the issue of the reserved matters decision notice for plot 2, APP/15/01156, by 4 months.
- 7.8 The remaining conditions on APP/15/00732 either set times for provision or require ongoing compliance: A4 (Environmental Impact); A6 (PD restrictions re means of enclosure along access road & Park Lane); A7 (landscape implementation); A15 (mitigation for unforeseen contamination); B6 (range of uses with a max of 18,534 sqm of B8); B7 (no residential use); B8 (provision & retention of access parking, turning & loading areas); B11 (no floodlighting unless first agreed); C4 (access link construction); and C5 (provision of bus gate).
- 7.9 The development at plot 2 has been completed and occupied since 2017, so less than 10 years. As such any breach of any condition could still be enforced. However, after 8 years the Council has received no complaints, and there is no evidence to suggest that there has been anything other than full compliance with all conditions. The LPA has not taken any enforcement action to date.
- 7.10 This LDC application seeks confirmation that it would be lawful to implement the remaining third bay of APP/15/01156, amounting to an additional 6,012sqm of B8 floorspace, at any time without need for further planning permission or discharge of condition. It has been established above that all the necessary pre-commencement

conditions for plot 2 have already been submitted and discharged, and there are currently no breaches of any ongoing compliance conditions at plot 2. The variation of condition B6 removing the limit on the amount of B8 floorspace across the whole site is such that the additional 6,012sqm of B8 floorspace would not be a breach of condition.

- 7.11 By virtue of the completion of the first phase of development on the site, it is further considered that the relevant permissions for the implementation of the second phase, comprising the third bay of plot 2 are extant. Therefore, no enforcement action could be taken if the additional 6,012sqm of B8 floorspace were to be constructed in accordance with the approved plans listed on APP/15/01156, as amended by NMA APP/16/01114, and in full compliance with the relevant conditions discharged under APP/15/00732 and ongoing compliance conditions of APP/17/01324. Any such development would therefore be considered lawful under Section 192 of the Town and Country Planning Act.

8 Conclusions

- 8.1 Notwithstanding the submitted information which is considered to incorrectly assess the interpretation of condition B6 of the outline consents, the LPA is satisfied from its own evidence and documents, that on the balance of probabilities, the proposed development is lawful under Section 192 of the Town and Country Planning Act. Therefore, a Lawful Development Certificate should be issued.

9. RECOMMENDATION:

That the Development Manager be authorised to **Grant a Certificate of Lawful Development** for application APP/25/00709 under Section 192 of the Town and Country Planning Act.

Havant Borough Council, as Local Planning Authority, certifies that on 08/09/2025 the development described in the First Schedule to this certificate in respect of land described in the Second Schedule and edged in red on submitted 1:2500 Location Plan drawing would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason:

All the pre-commencement conditions of outline consent APP/15/00732 have been discharged, and there are no breaches of remaining compliance conditions on APP/17/01324. Reserved matters application APP/15/01156, as amended by APP/16/01114, is considered extant by virtue of the completion of the first phase of development. Implementation in full accordance with the approved details and plans is therefore considered lawful. There is no longer any restriction on the amount of B8 floorspace on the development.

FIRST SCHEDULE:

This certificate relates to the following development:

The completion of the second phase of the warehouse and distribution building approved under outline consent APP/15/00732 and reserved matters application APP/15/01156, as amended by NMA APP/16/01114, to provide an additional 6,012 sqm of B8 floorspace.

SECOND SCHEDULE:

Land at Plot 2, Dunsbury Park, Fitzwygram Way, Havant, PO9 4EE as shown edged in red on submitted 1:2500 Location Plan unique plan reference number p16f/uk/1304301/1748832.

OTHER IMPORTANT INFORMATION:

(1) This Certificate is issued solely for the purpose of Section 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