

DELEGATED OFFICER REPORT

Ward: Tilehurst

App Ref: 240186/CLE and 240201/CLE

Address: 20 Norcot Road, Tilehurst, Reading, RG30 6BU

Proposals: (both with same description) Lawful use of Class B2 Industrial Use for more than 10 years

Case Officer: David Lloyd

Date received (valid from): 12/02/2024

Target Decision date: 08/04/2024

1 SITE DESCRIPTION

Site visit date: not required

Site visit photos: not required

2 PROPOSALS (both applications)

The applicant proposes that the lawful use of the site is Class B2 industrial use.

Application Form

Application site: 20 Norcot Road Peter Moss Services

Description: Lawful use of Class B2 industrial use for more than 10 years

Grounds for application: The use began more than 10 years before the date of these applications (12/02/2024).

Is the certificate being sought for a use, operation, or activity in breach of a condition or limitation?: This has been marked as 'No'.

Submitted Plan

An annotated Location Plan has been provided.



3 RELEVANT PLANNING HISTORY

9063 The erection of a motor showroom with living accommodation over and 8 garages at the rear GRANT 10/11/1961 Subject to conditions

9492 The conversion of No 20 Norcot Road into two lock-up shops with living accommodation and the erection of a motor showroom abutting on the south-east side of the principal building with a repair workshop on land at the rear GRANT 27/04/1962 Subject to conditions

181302 Erection of 3 semi-detached dwellings following demolition of the existing garages GRANT 13/02/2020 Subject to conditions Not implemented Lapsed permission

190849 Application for a Lawful Development Certificate for a Proposed change of use from B2 to B1 Withdrawn

200373 Erection of part 1.5 storey, part 2.5 storey apartment block comprising 1 x 1-bed flat and 2 x 2-bed flats following demolition of existing vehicle sales building GRANT 26/04/2021 Subject to conditions Not implemented

230312 Demolition and rebuilding of garage workshop Withdrawn

231165 Lawful use application for an existing use of the B2 operations Refused - insufficient evidence

The current applications are a resubmission of 231165.

Analysis

4 LEGAL AND PLANNING POLICY CONTEXT

Guidance

[Lawful development certificates - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/lawful-development-certificates)

Legislation

A certificate is sought under s191 of the Town and Country Planning Act 1990:

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful;

or (c) any other matter constituting a failure to comply with any condition or

limitation subject to which planning permission has been granted 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.

The highlighted strands appear likely to apply.

Application 231165 was submitted on 07/08/2023 and refused on 20/12/2023.
An enforcement notice was served on 10/01/2024 on the land:

Without planning permission, the material change of use of the land from vehicle sales and associated garage workshop to a mixed use of vehicle bodyshop and spraying business with vehicle storage (sui generis), involving operational development by the erection of (a) a vehicle body spraying building, (b) a lean-to extension to the workshop garages, as shown edged black and annotated on the attached plan

which includes a B2 use thus having bearing on the claimed use by this application. The notice is subject of appeal (333817) and is to proceed by the inquiry procedure scheduled for 4 and 5th June 2024. The appeal turns on ground (d) only although there may be a hidden ground (c) element.

This application was submitted on 12/02/2024.

(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.

The enforcement notice requires the activity for the site to cease. The application conflicts with s191(2)(b) and thus a certificate cannot be granted.

Use Classes

Car repairs and body repairs are typically placed within B2 class.

The enforcement expediency report found as follows:

The development granted by permission in the 1960s established a sui generis use; the ancillary workshop, had there been no amenity impact, would have been construed as a "B1 use" (if operated independently). The conditions effectively restricts "B1 use" to ancillary status and safeguards no impact on amenity from "noise, vibration, smoke, smell, or otherwise". It furthermore maintains the land in a neat and tidy condition, avoiding use of the site as a store or dump for unroadworthy vehicles. Works conducted on vehicles were conditioned to take place within the workshop.

The extent of the current workshop use would be considered today a B2 use as there is demonstrable impact from noise and odour. That said, there is apparent vehicle storage and sales which present a sui generis use.

*Whether argued as B2 or sui generis the current use is **materially different** to the lawful 1960s use due to the extent of noise generated from generators used for body spraying vehicles. The site is used for vehicle bodywork & spraying **AND**⁵ vehicle storage and sales = **sui generis (made up of B2 and sui generis)**. Whether argued as B2, the workshop operators appear to have extended their business interests.*

There may be other elements⁶ to the use of Unit 4:

Vehicle rebuilding & reconditioning & restoration = B2

Vehicle disassembly = B2

Tyre fitting = B2

Tyre retailing and fitting = sui generis

Vehicle parking place (no sales) = sui generis

Vehicle sales = sui generis

Vehicle storage = B8

Combining two elements not in the same class from the above will render the use sui generis. There is no evidence that one business is ancillary to the other.

Consultations

Legal comment received:

The certificate cannot be fully granted because of the joint effect of:

- s191(4)

(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; and

- *s191(3)(b):*

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

Looking at the lawfulness at the time of the CLE application (12/02/24), at which time there was an enforcement notice covering at least some aspects of the existing use, renders a decision of unlawful.

5 **Conclusions**

The Lawful Use of the Land

Prior to the submission of the applications, the 1960s decisions steered clarity of the lawful use of the land - **a sui generis use** for the sale of vehicles with **ancillary** operations. No B2 standalone operation was permitted. Such operations merely complemented **the primary use of vehicle sales**.

What occurs on the land currently has not established a lawful use. The argument that a B2 use subsists on the land is not made out. The current use is caught by an enforcement notice.

The Claimed Use of the land: ‘Peter Moss Services’

There is no statement by Peter Moss nor is there evidence of his operations in precise clear and unambiguous terms. The same can be said about the presence of Richard and Andy Moss and their relationship to the same.

Statements focus attention of vehicle repairs and body spraying and vehicle washing by others. The statements are not complemented by evidence. Where business activities have been ongoing for the past 7 years for instance, it is likely documents for company/trading accounts and taxation purposes, as well as bank accounts, can provide further steer. No such evidence is forthcoming.

The claimed use goes much wider than a B2 purported use of the garage buildings to the rear and involves car washing which is not claimed as occurring on the land until after 2017 (immunity cannot be made out).

The Claim in Law

The claim triggers s191(3)(b) and s191(4) as it has been submitted for a use already the subject of an enforcement notice. The applicant has appealed the notice and an inquiry under ground (d) (immunity) will be held on 4-5 June 2024.

6 RECOMMENDATION

That the Certificates are REFUSED for the following reason:

The claim triggers s191(3)(b) and s191(4) of The Act as it has been submitted for a use already the subject of an enforcement notice.