

Planning

Growth & Development

Delegated officer report for planning application

Application no. 131901/LP/2021
Date registered valid: 12 October 2021
Proposal: Certificate of lawful proposed use of the premises as class E retail
Address: Anchors Away Play Centre, Greenbrow Road, Manchester, M23 2XQ
Ward(s): Baguley Ward

Applicant: Seva Patidar Ltd C/o Agent
Agent (if any): Mr David Hinds Q+A Planning The Stables, Paradise Wharf, Ducie Street, Manchester, M1 2JN
Case officer: Robert Griffin
Tel: 0161 234 4527
Email: robert.griffin@manchester.gov.uk

Recommendation: Approve
Date of recommendation: 24.11.2021

Application details

Type of application: Certificate Lawful Development Proposed
Development type: Certificates of lawfulness
Date of site visit: None required for this type of application

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

No neighbour notifications have been printed and sent.

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

Listed building: Not applicable
Conservation area: Not applicable
Tree Preservation Order: Not applicable

Description of area

The application site relates to a single storey building with associated car parking area and fencing which has been used as an indoor children's play centre (D2) and prior to that a Royal Naval Association Club. The use was granted planning permission under planning permission reference 089242/FO/2009/S2 where the submitted application forms indicated that the proposals were for the installation of boundary treatments, elevational alterations and change of use from Royal Naval Association Club to Children's Play Centre. This planning permission is understood to have been implemented and online photo resources show this to be the case in 2012 through to 2021.



Application property and demise

Description of development

The application is seeking confirmation from the Council as local planning authority that the existing use falls within the same use class as it is proposed to use the building and therefore planning permission would not be required.

Consultations & Notification Responses

None required.

Assessment

As a result of changes to the Use Class order on 1st September 2020 some of the former D2 uses have been moved into the new Class E commercial use class.

Section 55(1) of the Town and Country Planning Act 1990 defines the term 'development' which includes the change of use of a building. Section 55(2)(f) explains that in the case of buildings used for a purpose of any class specified in an order made by the Secretary of State, the use of that building for any purpose within the same class shall not be taken, for the purpose of the Act, as amounting to 'development'.

Section 192 of the Act makes provision for an application to be made to a Local Planning Authority by anyone who wishes to ascertain whether any proposed use of a building would be lawful. In such applications the planning merits are not relevant. The LPA is asked to formally determine that planning permission is not required.

The Government published the Town and County Planning (Use Classes) (Amendment) (England) Regulations 2020 in July 2020 which came into force on the 1st September 2020. The changes included revisions of the classification of uses of property. Former Classes A, B1 and D, applicable to retail, office and non-residential institutions and assembly and leisure uses were removed and a new use class introduced in their place.

The new Class E includes commercial, business and service and brings together the former A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes) and B1 (business) as well as parts of classes D1 (non-residential institutions) and D2 (assembly and leisure) into one single use class to allow for changes of use without the need of planning permission.

The Town and Country Planning (Use Classes) Order 1987 (as amended) defines the classes of use for the purposes of section 55(2)(f) of the 1990 Act. Class E in Schedule 2 Part A is defined as:

"Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes -

(a) **For the display or retail sale of goods, other than hot food, principally to visiting members of the public,**

(b) 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.

(c) For the provision of the following kinds of services principally to visiting members of the public -

a. Financial services,

b. Professional services (other than health or medical services), or

c. Any other services which it is appropriate to provide in a commercial, business or service locality,

- (d) **For indoor sport, recreation or fitness, not involving motorised vehicles or firearms or use as a swimming pool or skating rink, principally to visiting members of the public,**
(e) For the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,
(f) For a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,
(g) For
a. An office to carry out any operational or administrative functions,
b. The research and development of products or processes, or
c. Any industrial process.

Being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Section 55(2)(f) of the 1990 Act states that a change of use is not development where the former use and the new use are both within the same class. Changes of uses which are not to be taken as development do not require planning permission.

As the existing children's facility operates under Class E(d) of the amended Use Classes Regulations as defined above the applicant asserts that the proposed use of the building for retail Class E (a) would not constitute change of use and therefore no planning permission would be required.

The Council concur with the assessment provided by the applicant and a positive certificate of lawful proposed development should be issued to confirm this.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Approve

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) Approve on the basis that the existing property is in use as a Class E (d) as prescribed by the Town and Country Planning (Use Classes) Order 1987 (England) (as amended) and the proposed use, as detailed within the submitted application form and supporting information, received by the City Council as Local Planning Authority on 12th October 2021 indicates the proposed use as being retail within Class E (a) of the same order. As such the proposed use

falls within the same use class as the previous use of the building and constitutes permitted development.

Appendix 1 – List of consultees & neighbours notified

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4

Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 15M

Area Team Boundary - Name: SOUTH