

Planning

Growth & Development

Delegated officer report for planning application

Application no. 136667/LP/2023

Date registered valid: 21 April 2023

Proposal: Use of property and site as a car servicing centre and car showroom with ancillary offices (sui generis)

Address: Mercedes Benz , Rowsley Street, Manchester, M11 3RR

Ward(s): Ancoats & Beswick Ward

Applicant: Tesla M Finnegan

Agent (if any): Andy Darby ELG Planning Darlington

Case officer: Robert Tyrer
Tel: 0161 234 4068
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Recommendation: GRANT

Date of recommendation: 16 June 2023

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: None Required

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

The application site relates to an existing car showroom and garage located on a triangular piece of land bounded by Ashton New Road, Rowsley Street and the railway line, adjacent to the Etihad Stadium, National Squash Centre and Manchester Regional Arena.

The site's main entrance is taken from Ashton New Road with additional entrances on Rowsley Street.



Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The surrounding area is a mixture of residential, commercial and industrial uses, which also includes the Etihad Stadium, National Squash Centre and Manchester Regional Arena. Residential properties are located to the south of the site on the opposite side of Ashton New Road.

Description of development

The applicant is applying for a lawful development certificate to confirm the proposed use of property and site as a car servicing centre and car showroom with ancillary offices (sui generis).

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties including neighbours; views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Issues

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is "the balance of probability" and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicants version of events or make them less than probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - *"If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"* In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

The Application

This application is pursued under subsection (1) of section 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

The applicant is applying for a lawful development certificate to confirm the proposed use of property and site as a car servicing centre and car showroom with ancillary offices (sui generis). The planning history of the site (appendix 3) reveals that many of the planning applications are related to the site being used for the sale or display for sale of motor vehicles.

The Town and Country Planning (Use Classes) Order 1987 (as amended) essentially categorises different types of property and land into classes. Change between uses within the

same class does not constitute development and therefore does not require planning permission. However, there are some uses that are specifically excluded from the Order by Article 3(6).

If a use does not come within any of the classes specified in the Order, it is a sui generis use.

This means that any change of use to or from such a use may (and in most cases will) constitute development, and so will require full planning permission.

The sale or display for sale of motor vehicles is excluded from the UCO by Article 3(6), so a car showroom is a sui generis use.

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'.

Therefore, as the existing car showroom and garage would be a sui generis use and that the proposal would meet the definition of a sui generis use this would not constitute change of use and therefore is excluded from the definition of development and no planning permission would be required.

Other Legislative Requirements Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

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: GRANT

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

1) GRANT on the basis that the existing property is in use as a car servicing centre and car showroom with ancillary offices sui generis use 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, indicates the proposed use a car servicing centre and car showroom with ancillary offices sui generis use. As such the proposed use is not materially different to the previous use of the building and site and planning permission would not be required.

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 90M

Coal Authority - Development High Risk - Name: DEVELOPMENT_HIGH_RISK_AREA

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface

Historic Landfill Site 250m Buffer -

Historic Landfill Site 250m Buffer -

Historic Landfill Site 250m Buffer -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: CENTRAL

Appendix 3 – Planning History (see next page)

Appendix 3 Planning History Summary

Application Reference and Status	Address	Proposal Description
116034/AO/2017 Recv: 24.04.2017 Application Approved - 19.06.2017	Mercedes Benz , Rowsley Street, Manchester, M11 3RR	Installation of 4.2 metre high, static, internally illuminated totem sign and internally illuminated fascia sign to replace existing fascia sign
099218/AO/2012/N2 Recv: 30.04.2012 Application Approved - 21.06.2012	Mercedes Benz, 26 Rowsley Street, Ashton New Road, Manchester, M11 3RR,	Erection of 2.8 metre high freestanding advertisement sign.
095378/FO/2011/N2 Recv: 03.02.2011 Application Approved - 15.03.2011	Mercedes Benz Manchester, Ashton Old Road, Manchester, M11 3RR	Elevational alterations and alterations to car parking layout
099217/FO/2012/N2 Recv: 03.05.2012 Application Approved - 18.07.2012	Mercedes Benz, Rowsley Street, Manchester, M11 3RR,	Alterations to west elevation involving insertion of two new high level windows and relocation of door
101212/FO/2012/N2 Recv: 28.12.2012 Application Approved - 21.02.2013	Mercedes Benz Manchester , Ashton New Road, Bradford, Manchester, M11 3RR	Erection of electricity sub-station and associated metering unit in car park area.
102621/AO/2013/N2 Recv: 03.06.2013 Application Approved - 29.07.2013	Mercedes Benz, 26 Rowsley Street, Bradford, Manchester, M11 3RR	Display of one internally illuminated double sided 8.1 metre totem sign and one internally illuminated double sided 3.1 metre totem sign.
110306/AO/2015/N2 Recv: 14.10.2015 Application Approved - 07.12.2015	Mercedes Benz , Rowsley Street, Bradford, Manchester, M11 3RR	Installation of various non illuminated and internally illuminated totem signs, flagpoles and fascia signs to forecourt

101963/FO/2013/N2 Recv: 25.03.2013 Application Approved - 20.05.2013	Mercedes Benz Manchester , Ashton New Road, Manchester, M11 3RR	Installation of external flues in association with new internal car spray booths and erection of single storey storage extension to existing premises.
095671/AO/2011/N2 Recv: 07.03.2011 Application Approved - 06.04.2011	Mercedes Benz, Rowsley Street, Bradford, Manchester, M11 3RR,	Installation of internally illuminated fascia sign
070959/AO/2004/N2 Recv: 23.02.2004 Application Approved - 16.03.2004	26 Rowsley Street, Off Ashton New Road, Beswick	Various illuminated and non-illuminated signage to car showroom
065837/FO/NORTH2/02 Recv: 09.08.2002 Application Approved - 25.09.2002	Mercedez-Benz,, Ashton New Road/Rowsley St.,, Beswick,	Replacement of existing chainlink and galvanised fencing with 2.4m high black metal railings to match existing along Rowsley Street
066454/FO/NORTH2/02 Recv: 24.10.2002 Application Approved - 02.12.2002	26, Rowsley Street, Off Ashton New Road,,	Single storey extension to car showroom and workshop. New facade to Ashton New Rd and elevational alterations, including vehicle test lane and new washscreen and alterations to parking areas
064143/FO/NORTH2/02 Recv: 31.01.2002 Application Approved - 21.03.2002	Land located on both sides of Alan Turing Way and, on the north side of Ashton New Road,, Beswick,	Landscaping works to include avenue tree planting, new footpath and 2.4m high weldmesh fencing on Alan Turing Way.
044846/FO/NORTH2/93 Recv: 24.12.1993 Application Not Proceeded With - 28.04.1994	John Wallwork site,, Rowsley Street/Ashton New Road, Clayton,	Erection of a portacabin for use as an office
049453/FO/NORTH2/96 Recv: 28.02.1996 Application Approved - 06.03.1996	Former Volvo Centre,, Ashton New Road,, Clayton,	External alterations to existing building including new entrance, external glazing and cladding to showroom and alterations to access doorway

049464/AO/NORTH2/96 Recv: 28.02.1996 Application Approved - 03.04.1996	Former Volvo Centre, corner of, Ashton New Road and Rowsley, Street, Clayton,	Illuminated corporate signage on 3 elevations of building
050576/FO/NORTH2/96 Recv: 04.09.1996 Application Approved - 23.12.1996	Former Volvo Centre,, Ashton New Road,, Beswick,	Erection of 2.4m high perimeter fencing, , ,
050081/AO/NORTH2/96 Recv: 11.06.1996 Application Approved - 22.08.1996	Rycroft Ltd,, Corner of Ashton New Road/, Rowsley Street,, Clayton,	Various signage including 2 pylon signs and 3 flagpoles
029905 Recv: 02.09.1987 Application Approved - 28.10.1987	John Wallwork Ltd.,, Ashton New Road, Beswick, BESWICK & CLAYTON,	A) Illuminated name sign to Ashton New Road elevation B) Illuminated name sign on gable wall C) Illuminated direction sign to Rowsley Street elevation D) Illuminated pole sign on forecourt
040820 Recv: 23.01.1992 Application Approved - 14.04.1992	John Wallwork Ltd.,, Rowsley Street, Beswick, BESWICK & CLAYTON,	A) Illuminated fascia signs B) Illuminated free-standing post sign
025459 Recv: 16.10.1985 Application Approved - 07.11.1985	Rowsley Street Depot,, Ashton New Road, Beswick, BESWICK & CLAYTON,	Erection of a modular "Glasdon" office/sales unit within existing car distribution and sales depot
F14046 Recv: 25.07.1980 Application Approved - 01.10.1980	Existing motor car, distribution premises and, vacant land fronting Rowsley, Street and adjoining Mosley,	Use of land as a car park and conversion of storage compound to a car preparation area.
043527/AO/NORTH2/93 Recv: 10.05.1993 Application Approved - 12.08.1993	JOHN WALLWORK, ROWSLEY STREET, ASHTON NEW ROAD, BESWICK,	Three internally illuminated fascia signs to car showroom

037310 Recv: 12.07.1990 Application Approved - 10.09.1990	land at, Ashton New Road/Rowsley Street, Beswick, BESWICK & CLAYTON,	Retrospective application for change of use of car park fronting Ashton New Road to land for the sale and display of motor vehicles
055560/FO/NORTH2/98 Recv: 11.11.1998 Application Approved - 08.01.1999	Rycroft Mercedes-Benz,, Ashton New Road,, Openshaw,	Elevational alterations to vehicle showroom
067867/FO/2003/N2 Recv: 29.04.2003 Application Approved - 03.06.2003	Manchester Mercedes,, 26 Rowsley Street,, Off Ashton New Road, Beswick	Refurbishment of existing vehicle sales and workshop facilities with new facade treatment, workshop welfare and sales facility extensions. Together with change of use of existing outbuilding for parts store and valet facility
027639 Recv: 19.09.1986 Application Approved - 07.11.1986	Rowsley Street Depot,, Ashton New Road, Beswick, BESWICK & CLAYTON,	Alterations to parts store to form a vehicle body shop with paint spray booth and new sectional roller shutter door