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Our ref **EKPS/230502/EP**

Planning and Regeneration
Manchester City Council
Town Hall Extension
Mount Street
Manchester
M60 2LA

9 June 2023

Dear Sir or Madam,

Application for Lawful Development Certificate (Existing Use): Unit 6, 4 Midland Street ("Elm"), Manchester, M12 6LB

Planning Portal Reference PP-12212452

On behalf of our client, David Luke Limited (referred to hereafter as the "Applicant"), we are pleased to submit an application for a Lawful Development Certificate application (Ref. PP- 12193176) at Unit 6, 4 Midland Street, M12 6LB (hereafter referred to as the "Site") for the following description of development:

> *"Application for Lawful Development Certificate to establish the existing Storage or Distribution use (Use Class B8) of Unit 6, 4 Midland Street, Manchester, M12 6LB."*

The building subject to this application forms part of the "Ecoworks" located on Midland Street and Handsworth Street and comprise the following properties in which the Applicant has a leasehold interest (see **Figure 1** below):

- Unit 4, 6 Midland Street (also known as "Oak Building")
- Unit 6, 4 Midland Street ("Elm Building") (the subject of this application)
- Unit 6a, 5 Midland Street ("Willow Building")
- Unit 2, Handsworth Street ("Maple Building")

^ Figure 1

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Registered Company Number: 08510332. VAT Number: 166 1177 09.

Regulated by RICS

This Application Comprises:

- Application Forms and Fee[1];
- This extended covering letter;
- Supporting evidence (Annex 1), comprising:
    - **Appendix 1**: David Luke Limited Abbreviated Audited Accounts dated 31 December 2012, 31 December 2014, 31 December 2018, 31 December 2021.
    - **Appendix 2**: David Luke Limited Lease Agreement for the property with Manchester City Council.
    - **Appendix 3:** Google Street View Images from May 2012, June 2014, June 2017, May 2018, July 2019 and October 2020.
    - **Appendix 4:** Statement of Truth from Kathryn Shuttleworth at David Luke Limited.

This letter continues to provide the background to the use of the property along with a summary of the relevant legislation under which this application is submitted and the documents and information submitted as evidence is also provided.

Background

This application is submitted following ongoing discussions with HS2 regarding the acquisition of the Eco Works premises on Midland Street / Handsworth Street, Ardwick, Manchester. As part of these discussions, HS2 have requested that evidence is provided that the existing use is lawful.

Planning History

A review of Manchester City Council's online planning system confirms that there is no recent or relevant planning history relating to the Site.

Use of Property

David Luke Limited is one of the main school uniform suppliers in the UK[2]. The business was founded in 1982 and moved to the "Oak" building at Unit 6, 4 Midland Street in 1996 and subsequently expanded to the other three properties which form the Eco Works.

The occupation of four buildings by David Luke Limited for Storage or Distribution Use (Class B8 use) has been continuous since the following dates:

- Unit 4, 6 Midland Street ("Oak") – 1996
- Unit 6a, 5 Midland Street ("Willow") – 2004
- Unit 2, Handsworth Street ("Maple") – 2009
- Unit 6, 4 Midland Street ("Elm") – 2012

[1] The fee of £234 has been paid via the Planning Portal..

[2] The company website is www.davidluke.com

Legislation

Turning to the relevant planning legislation, Section 191 of the Town and Country Planning Act 1990 ("TCPA") provides for applications to determine whether a specified existing use which has already been carried out is lawful for planning purposes.

By virtue of Section 191, uses and operations are 'lawful' if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force.

Guidance prepared by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government) advises that development or other activity on land is lawful for planning purposes if it is within one of the following categories and does not involve failure to comply with a condition or limitation subject to which planning permission has been granted:

(1) It is not within the definition of "development" in section 55(1) and (A) of the 1990 Act. (This might be because it is so insignificant that it can be disregarded (a "de minimis" operation, use or activity); or because it involves a change of use which is not, as a matter of fact and degree, materially different, for planning purposes, from a previous use of land.); or

(2) It is specifically excluded from the definition of development by section 55(2) (for example, a use of land for the purposes of "agriculture"); or

(3) It is within the definition of "development" in section 55, but is exempted from the need for planning permission by the provisions of section 57; or

(4) It benefits from an extant grant of permission under Part III of the 1990 Act (or the equivalent parts of preceding Acts); or

(5) It benefits from a general planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418), or by a simplified planning zone or enterprise zone scheme; or

(6) It benefits from deemed planning permission, whether under section 90 or by virtue of compliance with the requirements of an effective enforcement notice; or

(7) It took place before 1 July 1948 (the "appointed day" Country Planning Act 1947); or

(8) It is development by or on behalf of the Crown; or

(9) <u>The time for taking enforcement action has expired (our emphasis).</u>

In this case, it is considered that the Unit 6, 4 Midland Street has been operating as a Class B8 use since 2012. Consequently, the time for taking enforcement action against such change of use (10 years) has expired, and the use of the property in this manner is therefore lawful.

This application therefore seeks to regularise this use, by virtue of an application for a Lawful Development Certificate under the provisions of Section 191 of the TCPA.

Evidence Base

As outlined above the Eco Works site as a whole has been in Storage or Distribution use by David Luke since 2012, and the Elm Building at Unit 6, 4 Midland Street since 2012, and no enforcement or other actions have been taken by the Local Planning Authority. This is clearly evidenced in the Google Streetview images showing the Site in use by the applicant between May 2012 and October 2020 enclosed with this application.

In addition, David Luke Limited Abbreviated Audited Accounts from 2012, 2014, 2018 and 2021 are submitted. These confirm the occupation for the four Eco Works buildings: Oak, Elm, Maple and Willow for the business's operations and that the principle activity of the company is the wholesale sale of clothing, and that the buildings have been occupied continuously by the applicant for more than 10 years.

Further to this, a Statement of Truth has been provided by Kathryn Shuttleworth of David Luke Limited and copies of the lease agreements for all properties with Manchester City Council have been provided.

As such, it is considered that the use class of Unit 6, 4 Midland Street falls under Use Class B8: '*Storage or Distribution'* and has been operating within this use class for more than 10 years.

Burden of Proof

It is noted in the regulations and guidance for Lawful Development Certificates[3] (paragraph 006 Reference ID: 17c-006-20140306) that:

> *"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."*

Therefore, the test to be applied to the evidence submitted and obtained is the 'balance of probability'. This means that on review of the evidence provided the decision maker must be satisfied that on the evidence presented, the occurrence of an event was more likely than not.

We would consider that the information submitted, clearly illustrates that the site has operated continuously in storage or distribution use for a period in excess of 10 years, and the burden of proof is therefore satisfied.

Conclusions

It is clear from the information provided with this application Unit 6, 4 Midland Street has been operating as a Class B8 use since 2012.

Consequently, it is considered the use of the property for Storage or Distribution use (Class B8 use) has been established for in excess of 10 years and the use of this property in this manner is therefore lawful having regard to the evidence submitted within and attached to this letter, and the balance of probability. The grant of the relevant Lawful Development Certificate to confirm the lawful use of the property in this way is respectfully requested with consideration to Section 191 of the TCPA.

I trust the above is sufficient to confirm the existing use of the property, however if you have any queries or would like any further information, please do not hesitate to contact me by email or 'phone (07500 104178).

Yours faithfully,

Ellie Philcox MRTPI PIEMA
Director
ellie@euankellie.co.uk

[3] (https://www.gov.uk/guidance/lawful-development-certificates#establishing-whether-a-proposed-or-existing-development-is-lawful)