DELEGATED REPORT / CASE OFFICER'S ASSESSMENT

Ref No: ST/0104/24/CLU
Proposal: Application for a Lawful Development Certificate for the existing use of the premises as a use falling within Class E of The Town and Country Planning (Use Classes) Order 1987 (as amended)
Location: Unit 1 Station Approach
East Boldon
Tyne and Wear
NE36 0AB

Description of the site and of the proposals

This application relates to a vacant former tool hire business in East Boldon.

The evidence submitted by the applicant shows that the use as a tool hire business began in 2012. There is no record of planning permission being sought or gained for the use. The applicant has stated that the last use of the property as a tool hire business was in June 2023 and that the unit is now vacant.

The application seeks a Lawful Development Certificate to establish the use of the property as a class E use.

The applicant has submitted the following evidence to support their application:

- A letter from 'Watson Tool Hire' (Dated 17th October 2023), the former operator of the site, stating the nature of the business during their 11 year tenure
- An invoice showing the Watson Tool Hire business operating at the site on 7th February 2014
- Google Street View images from 2008 to 2023 showing the site operating as 'Artistic Iron Craft' and then as 'Watson Tool Hire'.
- Screenshots of social media (Facebook) posts showing Watson Tool Hire advertising that they are operating from the property, dating from August 2014 to April 2023

Assessment

In assessing this application due regard has been had to the requirement of section 149 of the Equality Act 2010.

Legal context & government guidance

Section 191 (1) of the Act States:

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.

Section 191 (2) of the Act States:

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.

Section 191 (4) of the Act States:

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.

In terms of the relevant time limit for the purposes of Section 191 (2) a, Section 171 B (3) of the Act is relevant in relation to this application and it states:

"no enforcement action may be taken in respect of a material change of use after the period of ten 10 years beginning with the date of the breach."

Government Guidance (online and in relation to lawful development certificates) includes that:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process."

The applicant is responsible for providing sufficient information to support an application and online Government Guidance states:

"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."

Section 191 (6) of the Act states:

"The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed."

Assessment of the details submitted by the applicant and other evidence of the Council

The applicant has submitted evidence to support this case. The application form states that the use of the building as a retail (formerly class A1 and now class E) business began on 31/12/2008 and the applicant has stated that Watson Tool Hire has operated from the premises for 11 years.

The applicant has submitted a selection of 'Google Street View' images dating between 2008 and 2023 which show that the unit was operating as 'Artistic Ironcraft' (December 2008, March 2010, July 2011, July 2012) and as a tool hire business (May 2016, March 2017, May 2018, March 2021, June 2022).

The applicant has also submitted screenshots from Facebook (August 2014, March 2018, November 2019, February 2020, July 2021, June 2022) advertising that the tool hire business is operating from the premises. Furthermore, a screenshot of a Facebook post from April 2023 advertises that the business would be relocating from the premises but was still operational at that time.

In addition to the above, an invoice from 7th February 2014 has been submitted which sets out that the tool hire business was operating from the premises at that time.

Having regard to the above information, and having no further information regarding the gate retailer/manufacturer business, it is not clear what use class this use would have fallen under.

However, it is clear from the submitted evidence that the Watson Tool Hire business operated at the site from at least 2012 until 2023. The Google Street View images and screenshots of Facebook posts make it clear that the Watson Tool Hire business operated at the site from 2014 to 2023. The submitted information indicates that the business relocated in or shortly after April 2023, and this is reflected by a screenshot of a Facebook post. The business is now closed at the premises and the unit is not occupied by any other business.

As a result, and having regard to the information provided as set out above, it is considered that (on the balance of probability) the property has been used as a tool hire business, Use Class E, for in excess of 10 years between 2012 and 2023 and has subsequently remained vacant and not been used for any other purpose / use, since its closure. Therefore, it is considered that continued use as a Class E use would be lawful.

Consequently, it is recommended that a Lawful Development Certificate be granted.

Recommendation

Grant Certificate of Lawfulness

Informatives

1 For the avoidance of doubt, this decision relates to the following plans:
"Unit 1 East Boldon Evidence of Previous Use" received 15/02/2024
"Unit 1 Station Approach Covering Letter" received 15/02/2024
"Watsons Tool Hire Credit Card Receipt" received 15/02/2024
"Watsons Tool Hire Use Letter" received 15/02/2024

Case officer: Seán Gallagher
Signed:
Date: 19/03/2024

Authorised Signatory: G.Horsman
Date: 19/03/2024

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