



Planning Development Management Ltd

**“Spot”
Ground Floor & Basement
56 Belsize Lane
London
NW3 5AR**

The Property

No 56 Belsize Lane is a four storey Victorian mid-terrace building, located within Belsize Lane Neighbourhood Centre. The building is not statutory or locally listed but is located within the designated Belsize Conservation Area. The property is used for a veterinary surgery to the lower ground and part of the ground floor, a retail shop for part of the ground floor, and residential accommodation to the upper storeys.

Planning consent was obtained for a change of use to the lower ground floor and part of the ground floor, from retail (Class A1) to veterinary surgery (sui generis), and has been occupied since by a retail shop trading as ‘SPOT’ (specialising in the sale of diverse pet related products) to the front part of the ground floor with an active shop frontage to Belsize Lane, and a veterinary surgery to the rear parts of the ground floor and the entire lower ground floor, originally occupied by “Village Vets” and currently operated by London Veterinary Specialists. This is a referral veterinary surgery for specialist treatments, and operates as a partnership supporting a number of veterinary practices both locally and regionally.

Planning History

Ref.	Description	Decision and Date
2014/3227/P	Change of use of part ground and the basement floors from shop (Class A1) to veterinary surgery (sui-generis)	Approved 24/07/2014
2017/3412/P	Removal of condition 3 (personal permission) of planning permission ref: 2014/3227/P (dated 24/07/2014) for the change of use from retail (A1) to a veterinary surgery (sui generis).	Approved 15/08/2017

The 2014 planning consent amended the description of development to “*Change of use of part ground and the basement floors from shop (Class A1) to veterinary surgery (sui-generis)*”; this was Council’s choice of wording.

It is however noted that a Certificate of Lawfulness reference 2010/6640/P was issued (to the same applicant) in respect to the existing established veterinary use of 11 Belsize Terrace, to confirm “*Retention of use of the entire property as a veterinary surgery (Class D1)*” was the lawful use at that time.

Existing Use

The existing use has been continuous since the 2014 change of use consent, with the retail use of the front part of the ground floor (for pet related products) and veterinary use to the rear part of the ground floor and to the lower ground floor.

Planning user

Whilst the 2014 consent describes the veterinary use as 'sui generis', very often planning consents for veterinary use – including the Certificate of Lawfulness for the veterinary use at 11 Belsize Terrace – confirmed that veterinary use is within Use Class D1. This has become Class E(e) under the amended Use Classes Order that came into effect on 1st September 2020.

Class E of the Use Classes Order provides as follows:

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 —
 - (i) financial services,
 - (ii) professional services (other than health or medical services), or
 - (iii) 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, principally for 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 —
 - (i) an office to carry out any operational or administrative functions
 - (ii) the research and development of products or processes, or
 - (iii) any industrial process,

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

Veterinary use has been widely accepted to come within Class E since this Use Classes Order came into effect. There are two parts of Class E which are applicable, as follows:

Class E (c) (iii) is applicable to veterinary services for the following reasons:

- The customers are owners of pets requiring treatment, or who will benefit from consultation with a veterinary professional. These are visiting members of the public.
- Veterinary services are regularly to be found in a commercial, business or service locality.

Class E (e) is applicable to veterinary services for the following reasons:

- Veterinary services are medical or health services, principally to visiting members of the public. Whilst the treatment is of pets owned by the visiting members of the public, it is the people who are customers, who bring their pets for treatment, who listen to the consultation advice, and who pay for the services provided – the animals themselves do none of these things.

- Veterinary services are clearly medical or health services – veterinary surgeons may use the title “Doctor”, veterinary professionals prescribe and provide medicine, conduct operations, take X-Rays and CT scans, provide nursing care for sick patients, and wear medical ‘scrubs’ just as is the case for those medical professionals who specialise in the treatment of people. These are all exactly as is the case with human health care, both in a general practice and in a hospital environment.

PRIOR to the change in the Use Classes Order on 1st September 2020, the majority of planning consents for veterinary use were granted under Class D1 – applicable to “Clinics, Health Centres, creches, day nurseries, and day centres”; however, some consents for veterinary use were instead granted as Sui Generis, commonly where the applicant had simply applied for a consent for veterinary use in the description, rather than specifying Class D1. There appears to be little consistency, both types of use consent appearing within the same planning authority on occasion.

Since the change in the Use Classes Order in 2020, the definition of the range of uses is both much wider and also more specific in respect to both medical services and other services appropriate for visiting members of the public. Many consents for veterinary use since this time, such as the examples noted below, are specific about the use being Class E, though some consents may instead refer only to veterinary use rather than specifying a Use Class category, whether Class E or Sui Generis.

There are very many examples available of veterinary consents in Use Class D1, but we provide below some examples, from around England, of consents since the change in the Use Classes Order that specifically relate to veterinary use in Use Class E:

Examples of Class E for veterinary surgeries

1) Wyre Forest DC - Kidderminster

Application [24/0149/CLP](#). This application related to the conversion of an established ground floor retail unit with residential flats over, within the town centre, for use as a primary care veterinary surgery.

Wyre Forest DC confirmed that the proposed use is within Class E, and issued a Certificate of Lawfulness.

In the course of discussion with Wyre Forest, as it became clear that they were uncertain where veterinary use should best fit within the Use Classes Order as amended, Counsel’s Opinion was sought on whether veterinary use should properly be considered as a Class E use. In the event, Wyre Forest came to the conclusion that the use was within Class E prior to the Opinion becoming available. However, we attach the Opinion, together with the details of the proposal, to provide you with the full context of this case.

The Opinion, in summary, is that veterinary use – in this specific case, and more generally - is properly considered to be a Class E use.

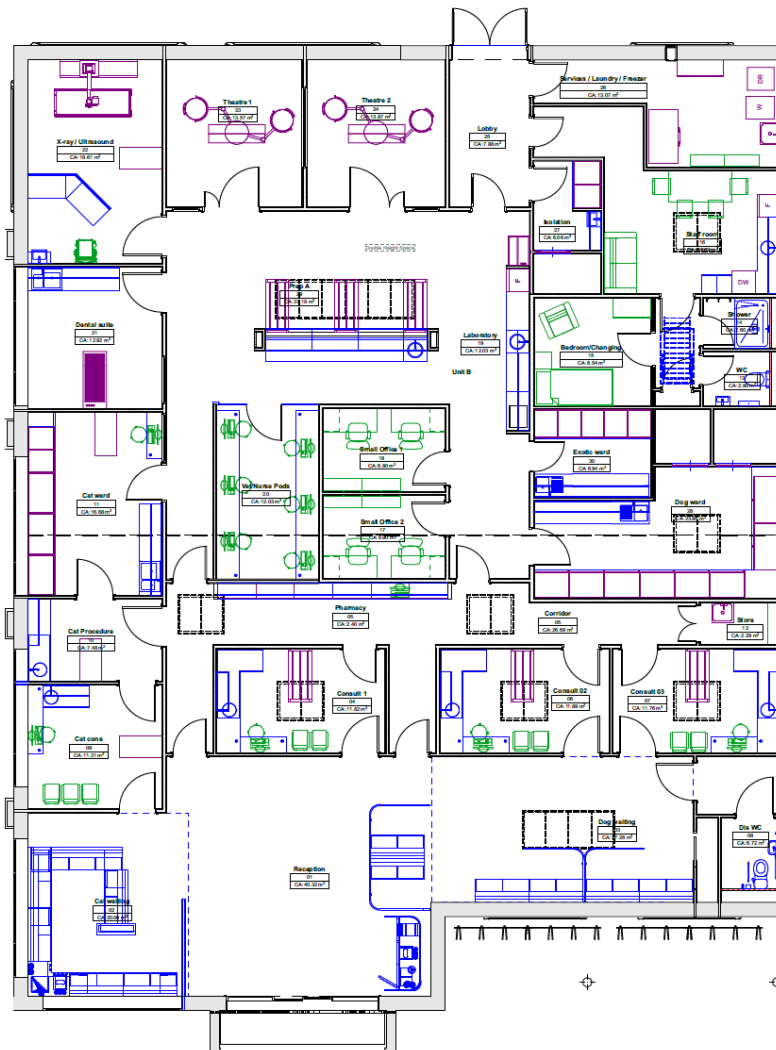
This primary care veterinary clinic comprises of: a reception & waiting area, five consulting rooms in which veterinary surgeons and veterinary nurses will meet patients and owners, and conduct examinations, two small operating theatres for surgery on animals, together with a dental treatment room, a preparation area adjacent, an x-ray facility, Ultrasound room, and separate recovery ward rooms for cats and dogs, together with ancillary areas such as laundry, admin office, etc.



2) Guildford BC

Application [20/P/01974](#). This application related to the conversion of a former retail store previously operated by Budgens for 20 years, up to 2012, since when the building had been vacant. In late 2020, Tesco fitted out half of the building for a local food store, opening in early 2021. Our clients wished to occupy the remaining part for a primary care veterinary surgery, comprising reception with separate waiting areas for cats and dogs, 4 consulting rooms, a dental suite, two operating theatres, an X-Ray and Ultrasound suite, preparation / lab areas, wards for cats and dogs, and ancillary facilities including admin offices. This is again similar to the proposed fit out of the subject site.

Guildford Borough Council accepted that retail and veterinary clinic uses both fall within Class E, and consequently that the proposed change of use of this part of the building from retail to veterinary clinic does not constitute development, and as such, issued a Certificate of Lawfulness.



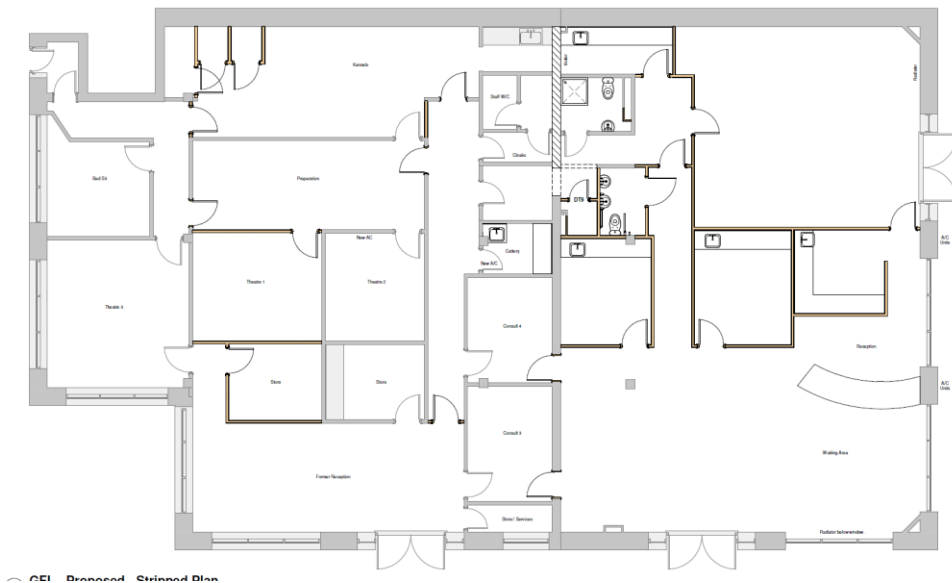
3) Sunderland CC

Application [20/02189/CLP](#). This application related to the conversion of an existing (vacant) office unit, for the expansion of the client's existing veterinary ophthalmic clinic in the adjacent unit. The expansion would create three additional consulting rooms, and relocate the reception area, whilst also providing a new training / lecture / staff room space; the expansion allowed the previously existing clinic to convert some space to create an additional operating theatre, improved recovery ward space, and improved laboratory space.

Sunderland CC found that both veterinary practices / surgeries and offices were now within Class E, and there was therefore no change of use; a Certificate of Lawfulness was therefore granted.

Further, the Officer's Report states that *"it is commonly accepted that veterinary practices/surgeries fall within the former D1 Use Class as set out within the Use Classes Order 1987 (prior to 1st September 2020). This is generally borne out by simple internet searches and historical planning decisions made on such matters. As of the 1st September 2020, amendments to the Use Class Order has re-categorised D1 within the newly created Class E. Class E, which now comprises a broad church of uses, includes clinics and health centres which were previously set out within CD1.... The general operation of the ophthalmic clinic which includes animal care and medical interventions such as procedures/operations, would, in the opinion of the LPA, sit comfortably within parameters of the former D1 and the recently introduced Class E"*.

The combined unit comprised a reception area, four consultation rooms, three operating theatres with associated preparation area, separate dog and cat recovery ward areas, pharmacy, office/admin areas, a combined lecture room & staffroom, and a bed-sit for overnight care as required. This use is more intensive than that proposed at the subject site, being for the specialist care of ophthalmic cases, which can require retention of animal patients on site overnight.



4) Cheshire West and Chester

Application [22/01454/LDC](#). This application was for the change of use of an existing office building (Class E) to a Veterinary Practice (Class E). This planning authority confirmed that the proposed use as a veterinary practice is Class E and therefore issued a Certificate of Lawfulness, as the proposed use would be lawful without any consent for a change of use.

5) Lancaster City Council

Application [23/01400/FUL](#). This application was for **"erection of a veterinary referral clinic (Use Class E) with associated access"**, etc. This is a new building on a greenfield site, and proposed to comprise a two storey building of around 14,500 sq ft gross internal area. The ground floor will accommodate the clinical areas, including reception/waiting area, 6 consult rooms, 4 operating theatres with prep area, 3 recovery wards, X-Ray, CT and MRI facilities, pharmacy, and associated support areas; the first floor accommodates a cat recovery ward, physio and hydro rooms, together with administrative offices, meeting rooms and staff areas.

This facility is a significantly more intensive use than the subject property, on two storeys of a new building.

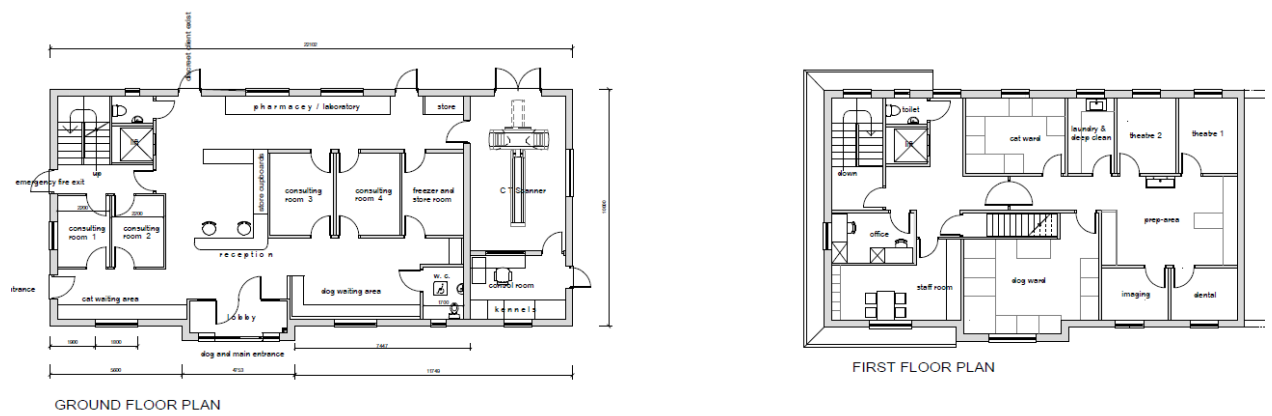
Lancaster CC issued their Decision Notice approving the application on 27th June 2024; the veterinary use as Class E was therefore accepted and approved.



6) Crawley Borough Council

Application [CR/2022/0046/FUL](#). This application was for a new build veterinary surgery; the application was approved, subject to a condition that “the premises shall be used for a veterinary surgery only and for no other purpose (including any other purpose in class E of Schedule 2 of the Town & Country Planning (Use Classes) Order 1987 (as amended)). This therefore accepts that veterinary use does indeed comprise a Class E use.

The approved drawings show that the clinic comprises separate cat and dog waiting areas in Reception, 4 Consultation rooms and a CT scanner at Ground Floor level, together with two operating theatres, a dental area, and imaging room, with associated preparation area, and separate recovery wards for cats and dogs, along with staff room facilities etc. This is again very comparable to the proposed fit out of the subject property.



7) Cotswold District Council

Application [23/03747/FUL](#). This application was for “Change of use of main block to Children’s Nursery (Class F(f) and E(g) together with alterations, conversion and extension of Dutch Barn to Use Class E9g) and as a saddlery and retrospective change of use of units 1 & 2 North Range

to a veterinary practice (Use Class E(e) with associated car parking, landscaping and associated works”.

Whilst the application addresses a wider range of matters, it includes an application to regularise consent for the veterinary use of two units that had been occupied by a veterinary practice for some years previously; the application specifies that the use is Class E(e) and the Council have approved the application on that basis.

8) Bristol CC

[Application 23/02146/F](#). The application is for part demolition and extension of an existing building and change of use from former tyre sales premises(sui generis) to use Class E (a) and veterinary Practice E (e) with associated car parking and service arrangements.

This was approved by the LPA; the officers’ report notes as follows in relation to the veterinary element: *“It is noted that the veterinary practice now falls within the same use class as a retail shop, through permitted development rights could be changed to a retail unit taking the development over the 500sqm threshold requiring an Impact Assessment. To mitigate this the unit will be conditioned for Class E (e) use only.”*

9) Winchester CC

Application [22/01542/FUL](#). This application is for change of use from equestrian to E(e) and erection of new equine veterinary hospital with new access – including a small animal veterinary clinic as well as equine veterinary. This was duly approved; the officer’s report does not question that the proposed veterinary use is within Class E(e); but the consent specifically restricts any change within Use Class E from the consented Class E(e) veterinary facility.

The approved plans show a small animal clinic on two levels, comprising reception/waiting area, 5 consult rooms, two operating theatres and a dental theatre, with associated preparation area, laboratory and separate car and dog recovery wads and associated staff and admin facilities; the adjacent equine hospital comprises 5 stables, an operating theatre, a hydrotherapy room, and two treatment rooms, together with associated staff and admin facilities.

This is clearly a very intensive and busy veterinary site involved in the treatment of both large and small animals – much more so than is proposed at the subject site.

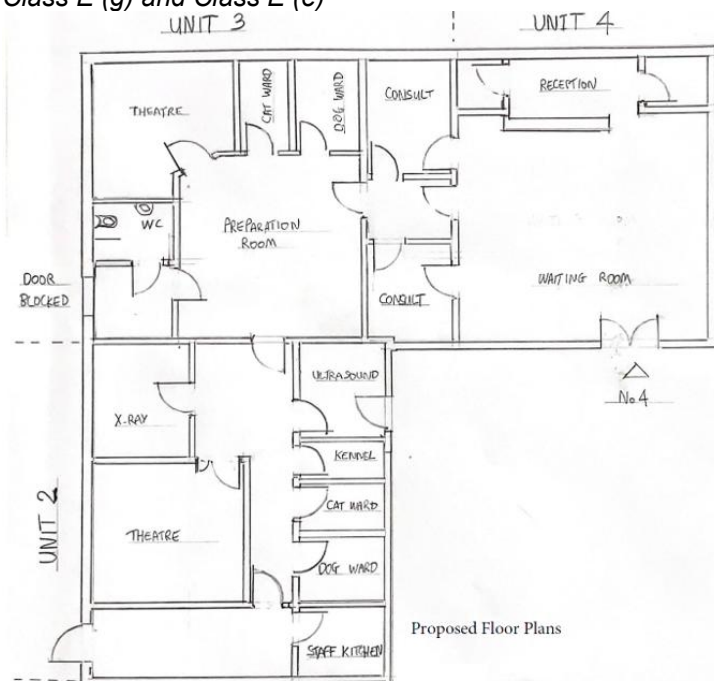


10) Poole BC

Application [APP/21/00298/C](#). This application is for a change of use of from existing storage and on site retail, to veterinary surgery, and associated amendments. The application was approved.

The officer’s report states as follows:

“The application seeks to combine unit 2 currently a B1 use and units 3 and 4 currently D1 use, this would result to a D1 use. Given Class B and Class D were revoked and now use Class E (Commercial, Business and Service). The proposed change of use would fall under Class E (g) and Class E (e)”



11) Chiltern & South Bucks

Application [PL/20/4288/FA](#). This application is for a change of use, extensions and associated alterations to accommodate a veterinary practice (Class E) and dog daycare facility (Sui Generis). The application was approved with conditions.

The officer's report notes that the current use of the site was retail (Class E) and the proposal was to also accommodate a veterinary practice (Use Class E) and dog day care facility (Use Class Sui Generis). The report notes that the existing retail use was Class A1, and has therefore become Class E; and that both retail and veterinary practice fall within the new Use Class E so no planning permission is required for the change of use from retail to a veterinary practice.

12) East Herts DC

Application [3/20/2503/FUL](#). This application was for the erection of a new building for use as a veterinary practice (use Class E). The application was duly consented with conditions.

The site had a previous planning consent that included conversion of the existing building to Class D1 as a veterinary clinic / surgery; the new application proposed demolition of the existing building, and replacement with a new building to accommodate the vets practice, in this case accommodating a reception area, two consult rooms, one operating theatre, together with an X-Ray facility and recovery wards for both cats and dogs, together with ancillary office & staff room etc.

The officer's report notes *“under the new Use Class Order the old B1 and D1 uses are now in the same use Class E, it would appear that the new building would be in the same use Class”*

13) Greater Cambridge Shared Planning

Application [24/0277/CL2PD](#). This is an application for a Certificate of Lawfulness under S.192 for a veterinary practice in Class E. The previous use had been as offices, as part of a larger building in commercial use.

The LPA accepted that the veterinary use is within Class E and therefore granted the Certificate of Lawfulness for veterinary use.

14) West Suffolk

Application [DC/21/0333/FUL](#). This application is for a new two storey building for Class E (veterinary surgery). Approved. The officer's report states: "Whilst the previously consented use was for an office, which was a use falling within the former use Class B1, the Use Class Order was amended in 2020 and an office use would now fall under Class E. Class E covers a wide range of commercial and business uses, and the new proposed veterinary practice use also falls within this use class."

The approved plans do not show details of the internal configuration but from the size of the building, on its two levels, we would anticipate broadly similar facilities to those proposed at the subject site.

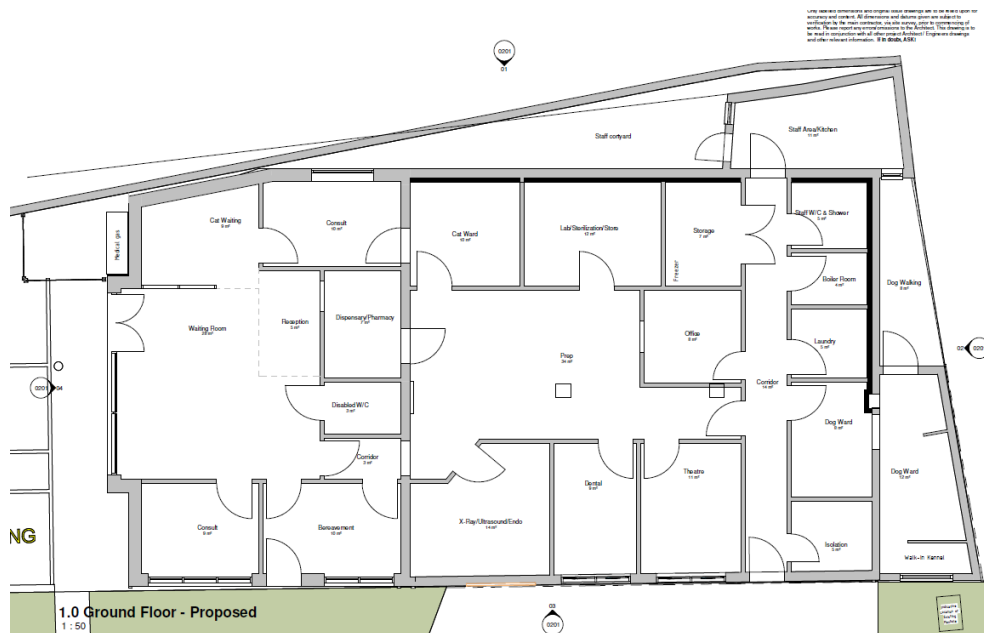
15) Wiltshire Council

Application [PL/2024/04382](#) – Application for change of use from B8 to Class E, for use as a veterinary clinic. This was approved; the officer's report fully accepts that the veterinary use is a Class E use.

16) Central Bedfordshire

Application [CB/23/01622/FUL](#) – Application for change of use and extension to existing car garage to form new veterinary clinic (Class E). This was approved, the officer's report fully accepts that the veterinary use is a Class E use.

The unit comprises reception area, three consult rooms, one operating theatre, one dental treatment room, an x-ray and ultrasound room, three recovery wards, and associated support facilities.



There are of course many other examples available – and many more where veterinary use was consented as a Class D1 use prior to the amendment in the Use Classes Order – but we trust that these examples should suffice.

Legal Precedent

The following linked cases do confirm that the Courts have found that veterinary use is within Class E in planning law:

- 1) High Court decision between Camilla Swire (claimant) and Canterbury CC(defendant) – decision dated 21 December 2021. This was to seek permission for a Judicial Review of the planning approval by Canterbury CC for a new veterinary surgery. The Court allowed the Judicial Review to proceed, on grounds including that the Council had failed to consider that the veterinary surgery is a Class E use and would therefore enable other Class E uses to follow the veterinary use if that use should cease.

- 2) Judicial Review and Consent Order CO/3822/2022 dated 21st December 2021 – Camilla Swire (claimant) and Canterbury CC (defendant) – The Court found that Canterbury CC had failed to consider, in approving the application for a single storey veterinary practice, that this use was now within Class E of the amended Use Classes Order; and therefore that a future change of use within Class E would be permitted. As this had not been considered, the approval was quashed.

Conclusions

It is evident from the above examples – and the many further examples that can easily be found across many different planning authorities – that veterinary use has been commonly accepted to be a Class E use, since the change in the Use Classes Order, and as a Class D1 use prior to that time.

In all the above example cases, Class E has been confirmed as applicable.

As such, we can only conclude that the existing veterinary surgery at the subject site must be a Class E use, and is no longer “sui generis”; we therefore request the clarity that would be provided by the grant of a Certificate of Lawfulness to confirm that the existing established use, originally consented in 2014 as ‘sui generis’, is now lawfully Class E.

PDML

13th March 2025

Appendices:

- A) Wyre Forest DC – Decision Notice, Application and Counsel's Opinion
 - B) Guildford BC – Decision Notice, Officers Report
 - C) Sunderland CC – Decision Notice, Officers Report
 - D) High Court & Judicial Review decisions Swire v. Canterbury CC
-



Mr Robert Cronk
Planning Development Management Ltd
The Pump House
Addington
Buckingham
MK18 2JR
United Kingdom

Rafiki
Ground Floor
The Prospect
Lion Square
Kidderminster
Worcestershire
DY10 1PD

APPLICATION REF: 24/0149/CLP

IMPORTANT – This communication affects your property

Certificate of Lawfulness

WYRE FOREST DISTRICT COUNCIL hereby certify that on 3rd May 2024 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reasons:

FIRST SCHEDULE

Proposal: Lawful development certificate for the proposed use of the premises as a veterinary practice

The certificate has been granted subject to there being no overnight treatment or accommodation of any animals or employees of the practice.

SECOND SCHEDULE

Ground Floor The Prospect Lion Square

Date Notice Issued:

3rd May 2024

Signed:

Planning Manager

Continued

Notes:

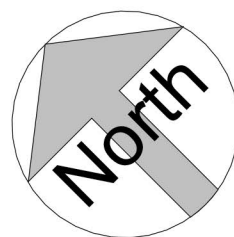
1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the operation specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful on the specified date and, thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the operation described in the First Schedule and to the land specified in the Second Schedule. Any development which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.



1.0 Ground Floor - Proposed
1 : 50



VISUAL SCALE 1:50 @ A1



Area:-
Basement GIA - 62m² / 667.36sqft
Ground Floor GIA - 365m² / 3928.83sqft



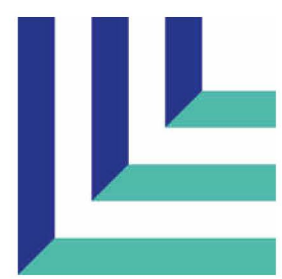
11 King Court
Willie Snaith Road
Newmarket, Suffolk
CB8 7SG, England

T. +44(0)1638 560343
W. www.acdprojects.com
E. enquiries@acdprojects.com

A1

Original Sheet Size
STATUS
Feasibility

PROJECT
Project Rafiki



CLIENT

DRAWING TITLE
General Arrangement Plan

SCALE 1 : 50 DATE 27/02/2024

DRAWING NUMBER
1441 / 1000

DRAWN TH

CHK DH

REVISION

P9

rev	date	name	chk	note
P9	13/03/2024	JE		Updated following Landlord comments
P8	04/03/24	TH	DH	Updated to suit RDS
P7	31/01/2024			Updated following MD's comments 29.01.2023
P6	19/01/2024			Updated following MD's comments 19.01.2023
P5	16/01/2024			Updated following MD's comments 15.01.2023
P4	11/01/2024			Reception office integrated, Nervous dog seating altered - dog waiting seating increased, Pharmacy enclosed - Colleague welfare altered to allow for increased pharmacy, Leaf and half doors integrated onto Theatres, Prep floor area decreased to allow for increased pharmacy space.
P3	08/01/2024			Layout altered following MD Comments, Walkway integrated, Corridor decreased to allow for larger consult rooms.
P2	05/01/2024			Fire Door added, additional two bay compound for dog waiting integrated
P1	04/01/2024			Preliminary

© COPYRIGHT

RE: [REDACTED] VETERINARY SURGERIES

ADVICE

1. I am asked to advise [REDACTED] ('the Applicant') which owns a number of veterinary practices across the UK. The Applicant uses various properties across the UK as primary care veterinary surgeries. I am instructed that typically the surgeries include a reception, waiting area, consulting rooms in which veterinary surgeons and nurses provide veterinary care, two small operating theatres, a dental care area, an X-ray room and ultrasound facilities. Some practices also have one or both of an MRI or a CT scanner. The provision of such a practice is the proposed use in this case ('the Proposed Use').
2. Those instructing me are of the view that given changes to the Use Classes Order 1987 ('the UCO'), the Proposed Use falls within Class E(e) of the UCO. Class E(e) provides:

"Use Class E – Commercial, Business and Service

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

...

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”

3. The Proposed Use being within Class E is useful for the Applicant as it provides additional flexibility, particularly where the Applicant is seeking to converting former offices/shops into surgeries.
4. The Applicant has previously satisfied local planning authorities that the Proposed Use is within Class E. I am asked to advise on the issue insofar as a positive advice on my part can accompany future LDC applications.
5. By way of background I am instructed that the Applicant recently applied for a Lawful Development Certificate ('LDC') to Wyre Forest District Council ('the Council') to confirm that the Proposed Use of the Prospect, Lion Square, Kidderminster, DY10 1PD ('the Property') was within Class E(e) of the UCO. The Property comprises a two-storey standalone brick-built building, located on the north part of Lion Square, Kidderminster, with public car parking on three sides. The ground floor of the Property has a long established retail use within Class E(a) occupied by 'Fabric Direct', a fabrics retailer. The basement is used by the retailer for storage.
6. I have been provided with the LDC application and correspondence. The key points summarised by those instructing me are thus:
 - (a) The Council originally agreed informally that the use class for the Property was within class E, but confirmed in February 2024 that this was an officer opinion and encouraged the Applicant to apply for the LDC.
 - (b) The Applicant applied for the LDC but the Council subsequently did not maintain the officer's previous position.
 - (c) There is correspondence with the Council (dated 15th April 2024) which sets out the Council's concerns. The Council's main argument related to the Property

undertaking a 'hospital' function (due to the two operating theatres, X-ray area, ultrasound room and dental surgery) rather than a consulting surgery, and therefore they considered the use would therefore be *sui generis*.

(d) Subsequently, the Council agreed that the Property fell within Class E and granted the LDC on 3rd May 2024. This is subject to there being no overnight treatment or accommodation of any animals or employees of the practice.

7. Whilst the Applicant is glad that a LDC was eventually issued the process was prolonged and it is hoped that advice from counsel may be of assistance in future applications to prevent delays in the LDC process.

8. The issue that the Applicant has encountered is whether the Proposed Use is Class E of the UCO or *sui generis*. The initial conclusion by this one planning authority, though their final position was amended, that it is *sui generis* has been on the basis that the use is not a consulting surgery but rather a 'hospital' function due to the operating theatres, x-ray provision, ultrasound equipment and dental provision.

9. Whilst the circumstances of each of the Applicant's surgeries will be slightly different, I am asked to advise as to whether the Proposed Use as defined above is within Class E(e), and whether any case law supports or contradicts the interpretation of those instructing me.

10. I am asked to advise upon the following:

(a) Whether any overnight treatment or accommodation of any animals would mean that the use class cannot be classified as class E;

(b) Whether the Applicant's Proposed Use falls within use class E or *sui generis* use (and if there is any case law to support this interpretation); and

11. As those instructing me note, the 2020 revisions to the Use Classes Order had a dramatic effect in the new expanded Use Class E which was introduced to allow a high level of flexibility within 'high street' uses. Class E provides:

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—
 - (i) financial services,
 - (ii) professional services (other than health or medical services), or
 - (iii) 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—
 - i) an office to carry out any operational or administrative functions,
 - ii) the research and development of products or processes, or
 - iii) 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. **(emphasis added)**

12. So we can see that retail, cafes and restaurants, professional services, medical services, childcare, sports facilities, offices, light industrial, etc are all now within

one compendium use class. Indeed, I would note the residual language of Use Class E(c)(iii) which provides for ‘any other services which it is appropriate to provide in a commercial, business or service locality’ which I understand has been held to bring within Class E previously *sui generis* uses such as tanning salons¹.

13. I note that it has been suggested previously that the Proposed Use would be within the meaning of ‘hospital’ rather than within Class E(e). I think it therefore necessary to consider Class C2 within which hospitals lie:

Residential institutions

Class C2.

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

14. Clearly, the key feature of Class C2 is ‘residential’ occupation, C2 is a component of the wider Class C which includes hotels, dwellinghouses, HMOs etc. The key point of difference between a hospital and medical consulting premises under Class E(e) is the residential occupation of the premises. That residential occupation barred from Class E(e) appears to be both patients and practitioners (Class E(e) explicitly excludes consulting premises attached to a practitioner’s residence).

15. In support of this contention I would note the form of the former Use Class D1 (still applicable in Wales) where a use such as the Proposed Use would fall within:

‘Class D1. Non-residential institutions

Any use not including a residential use-

(a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,’

¹ APP/R5510/X/22/3290784

16. That the Proposed Use includes medical equipment normally found within a human hospital is, in my view, irrelevant when one remembers that the key feature of C2 hospitals is their *residential* nature.
17. The Proposed Use has no space for human residential occupation. The consulting spaces, and space where animals might be ‘in recovery’ following an operation could be used for an animal’s overnight occupation: in a dog cage or similar. But it is apparent from the description of the Proposed Use that such overnight occupation is not part of the use.
18. I would, however, note that the distinction between Class C2 and Class E(e) would not *absolutely* exclude overnight occupation of premises in Class E(e): one must always bear in mind the principle of *de minimis* use. In my view this would allow for the possibility that in unusual circumstances a practitioner might find themselves occupying and using their premises outside of a normal working day, perhaps in a case of emergency treatment of an animal. I simply draw attention to this point as it is too easy to stray into an absolute application of the Use Classes when of course planning judgements of fact and degree are engaged.
19. I have sought to find any case law on Class C2 (and specifically the meaning of ‘hospital’ within that class) as well as any case law on the meaning of a medical consultant or practitioner’s premises in Class E. It has not, as far as I can find been the subject of litigation. Within wider planning legislation there is a definition of ‘hospital’ within the Interpretation provisions of the DMPO 2015 wherein:

“‘hospital’ means—

- (a) an institution for the reception and treatment of persons suffering from illness;
- (b) a maternity home; or
- (c) an institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation,

and includes clinics, dispensaries and out-patient departments maintained in connection with any such home or institution’;

20. However, this is stated to be a definition specific to the DMPO and I do not see that it assists in understanding the distinction between Use Classes C2 and E(e).

21. From the foregoing it should be clear that I consider the Proposed Use to be within Use Class E(e) and not Class C2. I am satisfied that the residential component of C2 use is the key distinction. Further, I do not consider that a *minimal* level of residential use (related to overnight care) would take the Proposed Use outside of Use Class E(e).

22. I advise accordingly. If I can assist further please do not hesitate to contact me.

ANTHONY GILL
KINGS CHAMBERS
25th JUNE 2024
MANCHESTER, LEEDS, AND BIRMINGHAM



APPENDIX B

Mr. Robert Cronk
Planning Development Management Ltd
The Pump House
Addington
Buckingham
MK18 2JR

**Town and Country Planning Act 1990 (as amended): Section 191:
Town and Country Planning (Development Management Procedure)
(England) Order 2015: Article 39**

**Approval of application for Certificate of Lawfulness of existing use or development:
20/P/01974**

Date of Decision: 02/03/2021

Proposal: Certificate of lawfulness to establish whether the change of use of part of Unit B from retail (Use Class A1/now Use Class E) to Veterinary Clinic (Use Class D1/now Use Class E) is lawful.

Location: Unit B, Former Budgens Food Store, Queen Elizabeth Park, Railton Road, Guildford, GU2 9JX

For: Mr. Andrew Mason
Linnaeus Veterinary Group Ltd

Guildford Borough Council hereby certify that on 19/11/2020 the use or operations described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):-

The proposed change of use of part of Unit B from retail to veterinary clinic does not constitute development, as both uses now fall within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended), as such planning permission will not be required for this change.

First schedule:

Certificate of lawfulness to establish whether the change of use of part of Unit B from retail (Use Class A1/now Use Class E) to Veterinary Clinic (Use Class D1/now Use Class E) is lawful.

Second Schedule:

Unit B, Former Budgens Food Store, Queen Elizabeth Park, Railton Road, Guildford, GU2 9JX

Informatives:

1. This decision relates expressly to unnumbered site plan, drawing number P20028-P02 and additional information received on 19/11/2020.

For Your Information

This Certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use or operations specified in the First Schedule taking place on the land described in the Second Schedule was lawful, on the specified date and, thus was not liable to enforcement action under section 172 of the 1990 Act (as amended) on that date.

This certificate applies only to the extent of the use or operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use, operations or other matter which is materially different from those described or which relates to other land may render the owner or occupier liable to enforcement action.

Please read the Important Notes attached.



Tim Dawes
Planning Development Manager

Important Notes

The applicant is recommended to retain this decision notice in a safe place or with the title deed of the property.

Building Regulations and other legislation

This permission relates only to planning legislation. It is your responsibility to seek any authorisations required under other legislation.

In particular, Building Regulations approval may be required for this work. For free informal advice please contact our Building Control Service at www.guildford.gov.uk/buildingcontrol or telephone 01483 444545.

Attention is drawn to Section 20 of the Surrey Act 1985 which requires that when a building is erected or extended, proper provision shall be made for the fire brigade to have means of access to the building and any neighbouring building.

Appeals to the Secretary of State

General

You, or an agent acting on your behalf, can appeal if you were the person who made the application. Appeals are dealt with by the Planning Inspectorate, an executive agency of the Department for Communities and Local Government. Its primary function is to determine appeals on behalf of the Secretary of State.

Appeals must be made to the Planning Inspectorate within certain time limits and on forms provided by the Planning Inspectorate. You can find more information on how to appeal at <https://www.gov.uk/appeal-planning-inspectorate>. If you do not have internet access you can contact the Planning Inspectorate at

The Planning Inspectorate
Customer Support Team
Room 3/13
Temple Quay House
2 The Square
Bristol
BS1 6PN
Telephone: 0303 444 5000
Fax: 0117 372 8782
Email: enquiries@planning-inspectorate.gsi.gov.uk

Certificate of Lawful Use or Development

Under section 195 of the Town and Country Planning Act 1990 (as amended) if you are aggrieved you may appeal to the Secretary of State against the decision of the local planning authority to refuse your application or to grant it subject to conditions, or if a decision is not made within a certain period. There is no time limit for making an appeal.

Appeals must be made to the Planning Inspectorate on forms provided by the Inspectorate.

Appl No: 20/P/01974 **8/13 week deadline:** 14/01/2021
Appl Type: Cert. of Lawful. of Existing Use or Dev.
Parish: Stoughton **Ward:** Stoughton
Agent: Planning Development Management Ltd **Applicant:** Linnaeus Veterinary Group Ltd
Location: Unit B, Former Budgens Food Store, Queen Elizabeth Park, Railton Road, Guildford, GU2 9JX
Proposal: Certificate of lawfulness to establish whether the change of use of part of Unit B from retail (Use Class A1/now Use Class E) to Veterinary Clinic (Use Class D1/now Use Class E) is lawful.

Officer's Report

Site description

The application site is located inside the Guildford urban area and lies within the Queen Elizabeth Park residential-led development. The site is an existing vacant retail unit, formally in use as a supermarket 'Budgens'.

Proposal

Certificate of lawfulness to establish whether the change of use of part of Unit B from retail (Use Class A1/now Use Class E) to Veterinary Clinic (Use Class D1/now Use Class E) is lawful.

Relevant planning history

02/P/01632 - Local centre comprising: Childrens' nursery, A1 foodstore, D2 Health & Fitness Centre, mixed use building (to now include the provision for the whole building to be used for the purpose of a doctors surgery within Use Class D1), B1 employment & associated car parking, together with alterations to access arrangements (including the deletion of the Bus only route) from outline planning permission 01/P/0881 dated 30/10/01. Amended plans received 24/09/2002 08/10/2002, 28/10/2002 and 12/11/02). Approved with conditions - 29/11/2002.

01/P/00881 - Outline applications for redevelopment to provide 525 dwellings, employment, nursing home, community facilities, retail, health and fitness centre, open space and associated roads (For further details please see supporting statement, as amended 15 August 2001) (additional plans received 06/08/03). Approved with conditions - 30/10/2001.

Consultations

None

Third party comments:

None

Planning considerations

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (SI 2020 No.757) was introduced by the government on 20 July 2020, and took effect on 1 September 2020. Under this new legislation, former use Class A1 (retail) and D1 (Non-residential institutions) now fall within the same use Class, that of Class E which covers commercial, business and services.

Retail and veterinary clinics use now both fall within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). Movement between uses within this Class does not constitute development, as such planning permission will not be required for this change. There are no conditions attached to the original permission which restricts the use to retail only.

Conclusion

The proposed change of use of part of Unit B from retail to veterinary clinic does not constitute development and as such no planning permission will be required for this proposed change.

RECOMMENDATION:

The proposed change of use of part of Unit B from retail to veterinary clinic does not constitute development, as both uses now fall within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended), as such planning permission will not be required for this change.

Approve - This application is not subject to any conditions and reasons.

Informatives:

1. This decision relates expressly to unnumbered site plan, drawing number P20028-P02 and additional information received on 19/11/2020.

Report Date: 02 March 2021

Case Officer:

Chris Gent
Planning Officer

Checking Manager:



Daniel Ledger
Applications Team Leader

Robert Cronk - Planning
Development Management Ltd
The Pump House
Addington
Buckingham
MK18 2JR
United Kingdom

**TOWN AND COUNTRY PLANNING ACT 1990: SECTIONS 191 AND 192 (as amended
by section 10 of the Planning and Compensation Act 1991)**

TOWN AND COUNTRY PLANNING 1990

CERTIFICATE OF LAWFUL USE OF DEVELOPMENT

Sunderland City Council hereby certify that on **11th January 2021**, the operations in the First Schedule to this in respect of the land specified in the Second Schedule to this certificate and edged red on the plan attached to this certificate, were lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

the operations described in the First Schedule do not require planning permission from the Council as Local Planning Authority given the previously-authorized use of the premises



Signed:

Peter McIntyre

Executive Director City Development

Date: **11th January 2021**

Application Ref: **20/02189/CLP**

First Schedule

Certificate of lawful proposed use as veterinary ophthalmic clinic.

Second Schedule

Frank Haslam Milan Limited, 3D Hylton Park, Hylton Park Road, Sunderland Enterprise Park, Sunderland, SR5 3NR

Notes:

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the operations specified in the First Schedule taking place on the land described in the Second Schedule were lawful on the specified date and thus were not liable to enforcement action under section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations which are materially different from those described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 192 (4) of the 1990 Act as amended which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change before the use is instituted or the operations begun in any of the matters relevant to determining such lawfulness.

PLEASE NOTE THAT THIS IS NOT BUILDING REGULATION APPROVAL

BUILDING CONTROL CAN BE CONTACTED ON 0191 561 1550 FOR FURTHER ADVICE

NUMBER OF REPRESENTATION
HAVE PD RIGHTS BEEN REMOVED

20/02189/CLP

DEVELOPMENT CONTROL SECTION

RECORD OF DECISION MADE UNDER DELEGATED POWERS

Proposal: : Certificate of lawful proposed use as veterinary ophthalmic clinic.

Location Frank Haslam Milan Limited, 3D Hylton Park Hylton Park Road, Sunderland Enterprise Park Sunderland SR5 3NR

Date App. Valid 19.11.2020

**Date of Site Visit
Photos Taken**

Paragraph of Delegation Scheme Relied Upon:-

217

IS THIS A CONFIDENTIAL MATTER AS REFERRED TO IN PARAGRAPH 7 OF THE GUIDANCE
YES/NO

CASE OFFICER:-

Development Management

Signature...PME...11 January 2021

Target Date for Decision 14.01.2021

Revised Target Date following time extension agreement:

DCLG Code: Other Notifications

Nature of Decision Made	Collate	Sign	Date
Authorising Officer (Circle Initials)			
TS/ VR/AJ/DPE/ABR	Signature...	Date 11/01/21.

Planning History

09/04661/LAP - Erection of new highway bridge, with two columns of maximum height of 190m and 140m respectively, and associated highway infrastructure, connecting Wessington Way in Castletown and European Way in Pallion, with associated landscaping and engineering works, together with a temporary bridge to facilitate bridge construction; Stopping-Up of highways, change of use of land and inclusion of additional land as new highway and highway infrastructure at and in proximity to Hylton Riverside, Hylton Park Road , Timber Beach Road, Wessington Way and European Way and Crown Works and Groves/Coles Site, Sunderland.

15/01261/AM1 - Non - Material Amendmenet to application 14/01199/LVA to vary height of the pylon - the proposed top of the pylon is at a level of 105m AOD. The planning drawings show the top of the pylon at a maximum level of 115m AOD and therefore the proposed amendment is consistent with this. Edge of the bridge deck - the longitudinal girders supporting the deck are positioned closer to the edge of the deck than shown on the planning drawings. MHWS level - the MHWS level shown on our proposed drawing is at 2.500 OD compared with the planning drawing which shows this level to be at 3.000 OD. The 2.500 OD level is derived from the sunderland tide tables. Cable stays - cable stay spacing remains similar with 7 at 122m overall. Pylon crosshead - we propose to revert to a separate crosshead girder below the bridge deck at the pylon similar to planning drawings.

20/01950/FUL - Change of use from B1 to sui generis - Veterinary Ophthalmology Referral Clinic.

20/02189/CLP - Certificate of lawful proposed use as veterinary ophthalmic clinic.

Constraints:-

Alteration Number 2

Defence Estates Safeguarding M

Defence Estates Safeguarding M

Archived Landfill

Non Active Landfill

Previous Industrial Use Polygo

Smoke Control Area

Source Protection Zones

Unitary Development Plan - Pol

Unitary Development Plan - Pol

Unitary Development Plan - Pol

Waste Sites

Policies

Type of publicity:

Consultees:

Network Management

Cllr Kelly Chequers

Cllr Michael Butler

Cllr Alex Samuels

Neighbour Consultations:

Final Date for Receipt of Representations: **15.12.2020**

Reason for decision

1. Relevant legislation

1.1 Under Section 192 of the Town and Country Planning Act 1990, a person may apply to the Local Planning Authority to obtain a decision on whether a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes. In determining certificates of lawfulness the National Planning Practice Guidance states 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."

1.2 Section 192 of the Town and Country Planning Act 1990 (as amended) states "If, on an application under this section, the local planning authority are provided 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, in any other case, they shall refuse the application". This means that the Council cannot consider such an application against the development plan or other material planning considerations but can only determine whether the works would be lawful under national legislation and therefore not need planning permission from the Council, in its capacity as Local Planning Authority.

1.3 An application made under Section 192 of the Act shall:

- (a) specify the land to which it relates;
- (b) describe the use or operations in question;
- (c) give the reasons for determining the use or operations to be lawful;
- (d) specify the date of the application for the certificate

2. Proposal

2.1 With the above in mind, the applicant has, through their agent, submitted an application to confirm that Unit 3D Hylton Park, within Sunderland Enterprise Park can be lawfully used as a veterinary ophthalmic clinic.

3. The site, surroundings and relevant history

3.1 The unit subject to the lawful development certificate sits within a quadrangle of 4 units within the wider Sunderland Enterprise Park. The subject unit, 3D, is currently vacant but has historically been utilised in for the purposes of B1 a (offices) (*now use class E as of 1st September 2020).

3.2 The adjacent unit, unit 3E, was subject to an application in 2017 to change its use from B1 a to a Veterinary Ophthalmology Referral Clinic (Sui Generis). This application was granted consent in October 2017 and is currently operational.

4. Consideration

4.1 The applicant is seeking a formal decision from the Council, in its capacity as Local Planning Authority, that the use of the unit as outlined in red and identified within the submitted floor plans, is lawful for the purposes of a veterinary ophthalmic clinic.

4.2 The use in question provides specialised ophthalmology services, with expertise in and facilities for extra- and intra-ocular surgery, including intra-ocular laser surgery, with cataract extraction, prosthetic lens implantation and retinal reattachment surgery carried out on the premises.

4.3 It is commonly accepted that veterinary practices/surgeries fall within the former D1 Use Class as set out within the Use Classes Order 1987 (prior to 1st September 2020). This is generally borne out by simple internet searches and historical planning decisions made on such matters. As of the 1st September 2020, amendments to the Use Class Order has re-categorised D1 within the newly created Class E. Class E, which now comprises a broad church of uses, includes clinics and health centres which were previously set out within D1.

4.4 The proposal evidently exhibits a particular specialism within the veterinary world however based on evidence before the LPA there appears to be no demonstrable grounds to suggest that this would preclude the use from falling with use class E. The general operation of the ophthalmic clinic which includes animal care and medical interventions such as procedures/operations, would, in the opinion of the LPA, sit comfortably within parameters of the former D1 and the recently introduced Class E.

4.5 Consequently with regard to the above and on the basis that the former use classes B1a and D1 now both fall within use class E, it is considered that the operation of the veterinary ophthalmic clinic from within unit 3D would represent a permitted change within the context of the Town and Country Use Class Order 1987 (as amended).

5. Conclusion

5.1 For the reasons set out above it is considered that the proposed use does not require formal planning permission from the City Council in its capacity as Local Planning Authority and the proposal is therefore considered to be 'lawful' for the purposes of Section 192 of the Town and Country Planning Act 1990 (as amended). It is therefore concluded that the Lawful Development Certificate should be granted in respect of the proposed use of Unit 3 as a veterinary ophthalmic clinic.

Equality Act 2010 - 149 Public Sector Equality Duty

During the detailed consideration of this application/proposal an equality impact assessment has been undertaken which demonstrates that due regard has been given to the duties placed on the LPA's as required by the aforementioned Act.

As part of the assessment of the application/proposal due regard has been given to the following relevant protected characteristics:-

- o age;
- o disability;
- o gender reassignment;
- o pregnancy and maternity;
- o race;
- o religion or belief;
- o sex;
- o sexual orientation.

The LPA is committed to (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share

it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In addition, the LPA, in the assessment of this application/proposal has given due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This approach involves (a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The LPA has taken reasonable and proportionate steps to meet the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities, as part of this planning application/proposal.

Due regard has been given to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves. Particular consideration has been given to the need to:

- (a) tackle prejudice, and
- (b) promote understanding.

Finally, the LPA recognise that compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

Nature of Decision Made Certify

END OF DOCUMENT

Claim No:

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

BETWEEN:

THE KING
On the application of
CAMILLA SWIRE

Claimant

-and-

CANTERBURY CITY COUNCIL

Defendant

-and-

MR ROB MCMEEKING

Interested Party

STATEMENT OF FACTS AND GROUNDS

Amended before service at
paragraph 20

Time Estimate

- 1 hour reading time

References:

- In [CB/#] are to page numbers in claim bundle

Essential reading

- Kent County Council highway comments 26.07.22 [CB/86-87]
- Kent County Council highway comments 30.08.22 [CB/88-90]
- The Officer's Report [CB/91-94]
- Design and Access Statement [CB/61-85]
- Plan at [CB/49]

A. INTRODUCTION

1. The Claimant seeks permission to bring an application for judicial review of the decision by the Defendant ("**the Council**"), dated 02.09.22, to grant planning permission ("**the Permission**") to the Interested Party ("**IP**") for a single-storey veterinary practice ("**the Proposed Development**") at the KSB Display Site, Ashford Road, Chartham, Kent ("**the Site**").

B. BACKGROUND

2. The Claimant is a local resident, who is concerned planning applications in the local area are properly and lawfully scrutinised. Although the Claimant is also a member of

Chartham Parish Council (which is opposed to the Proposed Development), she brings this claim in a personal capacity.

3. The Site comprises an area of hardstanding, which runs parallel to the A28 Ashford Road, and includes a steep grass bank to the rear [CB/66, photos 100, 101]. The Site is outside of the settlement of Chartham and is classified as being in the countryside for the purposes of local planning policy [CB/92, para 2]. The rear part of the Site falls within the Chartham Conservation Area [CB/72]. The front portion of the Site (which comprises hardstanding) is currently used for the display of sheds in connection with a local business, Kent Sectional Buildings (“KSB”) [CB/99, 100]. The present use of the Site is believed to generate little activity with few or no people or vehicles entering it. There is no pedestrian access to the site other than crossing the busy A28 road where there is a pavement. There are no crossing points (see [CB/100]).
4. On or around 15.06.22, the IP applied to the Council for planning permission for the Proposed Development. The application included a Design and Access Statement (“DAS”) and a number of plans and elevations. These included a proposed floor plan (22/1202-03 “the Floor Plan”) [CB/47, 78]. Among others, the Floor Plan depicted three rooms labelled “Treatment 1”, “2” and “3” respectively as well as a room labelled “Cat Treatment”.
5. A number of bodies and officers were consulted on the application, and representations were received from interested parties. As indicated above, the Parish Council objected to the Proposed Development. One of the Parish Council’s objections, recorded in the officer report [CB/91], was that access to the proposed surgery is likely to be on foot as well as by car, which would require pedestrians to cross the A28 (a road with a 40 mph limit) twice without any provision for crossings [CB/91, 113, 116]. See also marked up photograph at [CB/100].
6. Consultation responses were provided by relevant highways authority, Kent County Council (“KCC”) on 26.07.22 [CB/86-87] and 30.08.22 [CB/88-90].
7. The 26.07.22 KCC response [CB/86] noted, inter alia, that:
 - a. Based on a policy requirement of four parking spaces per treatment room, the proposed parking provision was insufficient;

- b. The IP had not demonstrated that delivery vehicles could safely turn on the Site and that vehicle tracking could be demonstrated on a plan.
- 8. On 03.08.22, the IP submitted a vehicle tracking plan (22 1202/17, “**the tracking plan**”).
- 9. The 30.08.22 KCC response noted, stated that “*the applicant has clarified that there will be a maximum of 3 treatment rooms within the centre and has confirmed that the other rooms within are back of house and not operational as treatment rooms*”. KCC confirmed that they had no objection to the Proposed Development [CB/88].
- 10. The IP’s application was considered by officers using delegated powers. An officer report (“**OR**”) was produced [CB/91-94]. This contained the following material passages:
 - a. The OR identified no relevant planning history for the Site;
 - b. The OR listed a number of local plan policies which were considered to be relevant, including Policy DE3 (Principles of Design);
 - c. In respect of highways and parking, the OR noted that KCC had not raised any objection to the Proposed Development and that sufficient parking spaces were proposed;
- 11. The Proposed Development was approved and the Permission granted by way of a decision notice (“**the Notice**”) dated 02.09.22 [CB/95-97].
- 12. Policy DBE3 specifies a number of matters that will be material considerations for the Council’s determination for planning applications [CB/123-124]. It states materially:

Proposals for the development, which are of a high quality design, will be granted planning permission having regard to other plan policies and the following considerations:

[...]

(c) The visual impact including the impact on local townscape character and landscape and the skyline

[...]

(e) The form and density of the development including: the efficient use of land, layout, landscape, density and mix, building heights, scale, massing, materials, finishing and architectural details including proposed lighting schemes;

[...]

(k) The safe movement of pedestrians, cyclists and cars within and around the proposed development;

[...]

(m) Parking arrangements having regard to the latest adopted vehicle parking standards

(n) That the proposed development does not have a detrimental effect on the highway network in terms of congestion, road safety and air quality

[...]

C. LEGAL FRAMEWORK

13. The principles upon which the court will act when faced with an allegation that a planning committee has been misled by advice provided by officers were summarised by Lindblom LJ in *R (Mansell) v Tonbridge and Malling BC* [2019] PTSR 1452 at §42:

*(2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge: see the judgment of Baroness Hale of Richmond JSC in *R (Morge) v Hampshire County Council* [2011] PTSR 337, para 36 and the judgment of Sullivan J in *R v Mendip District Council, Ex p Fabre* [2017] PTSR 1112, 1120. Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave: see the judgment of Lewison LJ in *R (Palmer) v Herefordshire Council* [2017] 1 WLR 411, para 7. The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.*

(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact

(see, for example *R (Loader) v Rother District Council* [2017] JPL 25), or has plainly misdirected the members as to the meaning of a relevant policy: see, for example, *R (Watermead Parish Council) v Aylesbury Vale District Council* [2018] PTSR 43 . There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law: see, for example, *R (Williams) v Powys County Council* [2018] 1 WLR 439 . But unless there is some distinct and material defect in the officer's advice, the court will not interfere.

14. This passage has to be adapted to deal with the situation where the report is written for a senior officer to take a delegated decision: see *Broad v Rochford District Council* [2019] EWHC 628 (Admin), at §26 per David Elvin QC sitting as a Deputy Judge of the High Court.
15. A decision to grant planning permission will be unlawful if the local planning authority has failed to have regard to material considerations. A claimant alleging that there has been such a failure must show that, on the facts of the specific case, the issue was “so obviously material” as to require direct consideration: *R (Samuel Smith Old Brewery) v North Yorkshire CC* [2020] UKSC 3 per Lord Carnwath JSC at §32.
16. A planning permission will also be unlawful where it has been granted on the basis of a mistake as to an existing fact, where the fact was objectively verifiable, the claimant was not responsible for the mistake, and the fact played a material, though not necessarily decisive, part in the decision: *R (Watt) v Hackney LBC* [2016] EWHC 1978.

D. GROUNDS

17. The Claimant submits that the Permission is unlawful by reason of the following grounds, which are pleaded jointly and/or in the alternative.
18. Each of the Council’s failures is addressed under a separate ground below.

Ground 1: Failure to have regard to the effects of and/or misinterpretation of the Town and Country Planning (Use Classes) Order 1987

19. Pursuant to s.55(2)(f) TCPA a change of use within a class prescribed by, among other things, the Town and Country Planning (Use Classes) Order 1987 (“**the UCO**”) will not amount to development requiring planning permission. Since 01.09.20, the UCO has

included a class known as “Class E. Commercial, Business and Service”, which is defined in Schedule 2 of the UCO as follows (emphasis added) [CB/129-142 @ 139]:

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 –

(i) financial services,

(ii) professional services (other than health or medical services), or

(iii) 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 –

(i) an office to carry out any operational or administrative functions,

(ii) the research and development of products or processes, or

(iii) 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.

(Underline added)

20. The IP’s planning application asserted that the use of the Site land as a veterinary surgery would fall within Class E(e) [CB/38]. The Council’s Pre-Action Response [CB/115-116]

now suggests that it considers use as a veterinary practice to be a *sui generis* use. This would appear to be *ex post facto* reasoning. There is no suggestion in the OR that the Council disagreed with the IP's characterisation of the development and certainly no reasons are given for doing so. In addition, KCC described the proposed use (anachronistically) as a D1 use (as opposed to a *sui generis* use) [CB/86]. In any event, the Council does not cite any authority (binding or otherwise) in support of its position and it is incorrect. Veterinary services are clearly medical or health services which are provided to members of the public (as the Local Plan confirms at [CB/126]). Such an interpretation is entirely consistent with the broader description of Class E as applying to commercial, business or service uses [CB/139]. Further the Council's own draft Local Plan expressly classifies veterinary use as Class E [CB/147]; cf. re sui generis at [CB/149].

21. The effect of the veterinary use being a Class E use is that, once established, the use of the Site could be changed to any of the other uses set out above, including, for example, a retail store, a restaurant and a creche. It is likely that these uses will have materially different impacts, particularly (but not necessarily exclusively) in terms of highways and parking. For example:
 - a. Appendix 4 to the Local Plan contains Local Parking Standards [CB/125-128]. This document imposes different standards for veterinary surgeries (which fell within Class D1 prior to 01.09.20), retail, restaurants and creches [CB/126].
 - b. Different Class E uses are likely to encourage the use of different modes of transport. For example, a retail store may generate more pedestrian trips, which could cause highways safety issues, particularly when crossing the A28 as noted in the summary of the Parish Council's representations in the OR [CB/91].
22. As set out above, Policy DBE3 (among others) required the Council to consider parking arrangements and to have regard to relevant parking standards and highway safety. It is accepted that the Council did have regard to parking arrangements for the Proposed Development *as a veterinary surgery*. However, there is no evidence that the Council considered the effects of s.55(2)(f) and the UCO on (among other things) the adequacy of the parking provision or the wider highways impacts of the decision to grant the Permission. There were two ways in which the Council could have addressed this:

- a. It could have imposed a condition restricting the use of the Site to use as a veterinary surgery. This is common practice: see, for example, *City of London Corporation v SSfE* (1972) 23 P & CR 169 and *The Rugby Football Union v Secretary of State for Local Government Transport and the Regions* [2002] JPL 740; or
 - b. It could have considered the other uses to which the Site could have been put following the grant of the Permission and without any further planning permission, and reached a view as to whether the impacts of those uses would also be acceptable.
23. The Council did not impose any condition restricting the use of the Site and there is no evidence that it considered the impacts of other uses. Indeed, there is positive evidence that it did not since the KCC comments only refer to the use of the Site as a veterinary practice and the OR has expressly relied upon them and nothing further.
24. It follows that, either:
 - a. The Council completely failed to consider whether the proposed development could fall within Class E and/or the effects of this, which was plainly a material consideration; or
 - b. The Council misinterpreted the UCO in concluding that the provision of medical or health services, principally to visiting members of the public in the context of Class E did not extend to the use land as a veterinary practice.

Ground 2: Mistake of fact and/or failure to have regard to material considerations and/or irrationality in respect of parking provision

25. As explained above, KCC originally objected to the Proposed Development on the basis that it did not provide sufficient parking but then withdrew its objection following assurances that the Proposed Development only contained three treatment rooms. It is clear from the OR that officers agreed with, and acted in reliance upon, this advice.
26. The Claimant has not seen the correspondence between the IP and KCC which led it to take the view that there were only three treatment rooms. However, such a conclusion was clearly wrong as a matter of fact and thus unlawful:

- a. The Floor Plan in fact shows that the Proposed Development will, in fact, contain four rooms which are expressly labelled as treatment rooms, i.e. "Treatment 1", "2" & "3" and the room labelled "Cat Treatment";
 - b. The Council's error (in concluding that there are three rather than four treatment rooms) was not the fault of the Claimant; and
 - c. This error played a material part in the Council's determination: it led KCC to withdraw its objection in respect of parking.
27. Further and/or alternatively, the Council failed to have regard to the effect of s.55(2)(a) TCPA which allows works of improvement or alteration which only affect the interior of a building to be carried out without planning permission. This means that, although the IP is required by condition 2 of the Permission to carry out the Proposed Development in accordance with the Floor Plan, it could the subsequently change the internal layout of the surgery to provide additional treatment rooms. It would have been open to the Council to impose a further condition on the Permission restricting the number of treatment rooms, but it failed to do so and there is no evidence that it even considered this.
28. Further and/or alternatively, it was irrational for the Council to conclude that the Proposed Development provided sufficient parking in the absence of any condition to restrict the number of treatment rooms.

Ground 3: Irrational conclusion reached in respect of the turning area for delivery vehicles

29. As explained above, the tracking plan was provided in response to the comments from KCC requiring the IP to demonstrate that the Site could safely accommodate a vehicle of at least 11.4m in length to safely enter, turn and exit. Although it did not expressly say so, it must be assumed that KCC considered the tracking plan to be satisfactory since it removed its objection. The OR does not contain any comment on the tracking plan, and it must be assumed that it agreed with KCC.
30. However, this conclusion was irrational and thus unlawful. It is clear from the tracking plan that a delivery *cannot* turn and exit the Site without encroaching upon four parking spaces (1, 2, 20 & 21) and indeed turning will be impossible when the car park (or even just one of these four spaces) are full.

Ground 4: Failure to have regard to the effects of lighting

31. As explained above, the Site is formally in the countryside and is within the conservation area. Although the OR includes consideration of the design of the proposed surgery, no consideration is given to the effect of lighting emitted from the Proposed Development on the surrounding area or the conservation area, and nor does the Permission impose any conditions in respect of lighting. Policy DBE3 required the Council to consider the effect of the Proposed Development on the landscape and to consider any proposed lighting scheme. It follows that the effects of light emitted from the Proposed Development were so obvious as to require consideration and that the Council failed to do so rendering the Permission unlawful.

Ground 5: Failure to have regard to the safe movement of pedestrians to the Site

32. As explained above, the Parish Council raised concerns about a lack of safe pedestrian access to the Site. The Council was required to the safe movement of pedestrians within *and around* the Site by virtue of Policy DBE3 [CB/123-124], which it accepted was relevant to the Proposed Development; see also Policy T1 [CB/119-122]. However, although some consideration has been given by KCC and in the OR to vehicular access to the Site, no consideration has been given to pedestrian access and to the Parish Council's concern about a lack of safe crossings. The PAP response simply states "... *There is no policy requirement for a crossing. ...*" [CB/116]. This amounts to a further failure to have regard to a material practical and/or policy consideration and renders the Permission unlawful.

E. COSTS

33. This claim is an environmental matter and is therefore an Aarhus convention claim (see *Venn v SSCLG* [2015] 1 WLR 2328). However, the Claimant does not seek a protective costs order.

F. CONCLUSION

34. For the reasons given above, the Claimant respectfully requests the Court to grant permission and the relief sought below.

AND the Claimant claims:

(1) An order quashing the Permission;

- (2) A declaration that the decision to grant the Permission was unlawful on one or more of the grounds stated above;
- (3) Further or other relief;
- (4) Costs.

BEN FULLBROOK
LANDMARK CHAMBERS

13 October 2022

Amended 18.10.22
at para 20
Richard Buxton

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
BETWEEN

THE KING

Claimant

(on the application of [REDACTED])
- and -

CANTERBURY CITY COUNCIL

Defendant

DRAFT CONSENT ORDER

UPON consideration of the claim and the grant of permission

AND UPON having regard to the matters set out in the schedule of reasons hereto

IT IS ORDERED THAT

1. **The claim for judicial review be allowed and the planning permission CA/22/01352 dated 2 September 2022 be quashed.**
2. **The defendant to pay the claimant's costs to be assessed if not agreed.**

Schedule of Reasons

- 1) The application was for use as a veterinary surgery. The decision failed to consider the implications of that use falling within use class E. Ground 1, for which permission was granted, concerned use class E.
- 2) While the parties do not agree as to the grounds which were refused permission, given that the parties agree the decision should be quashed, any trial of those other grounds would be academic.

Signed: [REDACTED]
[REDACTED], solicitors for the claimant

dated 21 December 2022

Signed: [REDACTED]
[REDACTED] Principal Lawyer, Canterbury City Council

21 December 2022

dated.....

Signed
[REDACTED] for the Interested Party

dated.....