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L211207 – Class E LDC Cover Letter



Planning  
Durham County Council

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**Sent by Planning Portal Ref. PP-10463908**

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Dear Sir or Madam

**SECTION 191 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)  
APPLICATION TO CERTIFY THAT THE EXISTING USE OF FLOORSPACE WITHIN USE CLASS E IS  
LAWFUL  
UNIT 2B, HERMISTON RETAIL PARK, FRONT STREET, CONSETT  
APPLICATION SUBMITTED BY ST JAMES PLACE UK PLC C/O ORCHARD STREET INVESTMENT  
MANAGEMENT**

### Introduction

We write on behalf of our client, St James Place UK Plc c/o Orchard Street Investment Management, to apply for a Certificate, under Section 191 of the Town and Country Planning Act 1990 (as amended), to confirm that the use of the floorspace at Unit 2B of the Hermiston Retail Park for purposes within Class E is lawful.

The application comprises the following documents:

- This covering letter
- The completed application forms
- Statutory Instrument 2020 No 757
- Plan Ref. SJP/HRP/SLPU2B – 'Site Location Plan'

The planning application has been submitted electronically via the Planning Portal (Ref: **PP-10463908**), and an online payment for the planning application fee of £462.00 has been made via the Portal.

The application fee adopted is that applicable to a traditional planning application for a change of use which is the most appropriate fee category.

### Lawful Nature of the Existing Development

Section 191(a) of the Act states that an application for a Certificate of Lawfulness of Existing Use or Development should be submitted if '*...any person wishes to ascertain whether...any existing use of buildings or other land is lawful*'.

Statutory Instrument 2020 No. 757 introduces amendments to the Use Classes Order which seeks to simplify the classification of commercial uses. The effect of the new legislation is to revoke Use Classes A, B1 and D and replace those classes with a new, single classification covering 'Commercial, business and service' uses (Class E).

Offices and associates throughout the Americas, Europe, Asia Pacific, Africa and the Middle East..

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As the Local Planning Authority will be aware, moving from one operation to another within the same use classification is not development as defined by Section 55(2)(f) of the Town and Country Planning Act 1990 (**'the Principal Act'**). Section 55(2)(f) states:

- (2) *The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –*
  - (f) *in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.'*

In this case, the applicant wishes to certify that the established use of Unit 2B is now within Use Class E and that any operation in Use Class E is lawful with the exception of the existing controls on retail use contained within the permission that currently controls the use of Unit 2B, namely Permission Ref. DM/20/02744/VOC. Condition 4 provides a control over the 'retail' use of the premises as follows:

*'Notwithstanding the provisions of Class E of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 the convenience goods retailing hereby approved shall not exceed 7250 square metres gross floor area.'*

The condition does not prevent the use of Unit 2B for all other purposes within Use Class E.

It follows that the use of Unit 2B at the Hermiston Retail Park is now correctly described as being within Use Class E of the Use Classes Order. The existing permitted use of Unit 2B for any purpose within Use Class E, with the above retail exceptions, is therefore lawful.

### **Summary and Conclusion**

In light of the above, we respectfully request that the Council issues a Certificate, under Section 191 of the Act, to confirm that the use of all of the floorspace with the exception outlined above for any purpose within Class E, without restriction, is lawful. We request the Certificate is issued under the following terms:

*'Unit 2B outlined in red on Plan Ref. SJP/HRP/SLPU2B – 'Site Location Plan' can be used for any purpose within Use Class E, except when it is used for retail purposes, which in that case its use is restricted by the terms of Condition 4 of Planning Permission Ref. DM/20/02744/VOC.'*

A copy of an example Certificate (Ref. 2021/1009/LDC) is enclosed for reference.

If you have any questions, please contact Matthew Sobic or Brad Wiseman at this office.

Yours faithfully



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