

Shay Syke, Halifax

Application for Lawful Development Certificate

LSI Halifax Limited

March 2024

Turley

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1. Introduction

- 1.1 On behalf of our client, LSI Halifax Limited, this Statement has been prepared in support of an application for a Lawful Development Certificate [LDC] in relation to the retail unit located at Shay Syke, Halifax, HX1 2ND [the Site].

Overview

- 1.2 The site has been trading as a B&M store for around 16 years and prior to that it was trading as a DIY garden centre and carpet retailer. B&M has occupied and traded at the premises without interruption since c.2007.
- 1.3 The nature of B&M's trade differs from previous occupiers, and specifically, B&M has traded in food and drink products at the site, in common with their nationwide business model. The site benefits from a planning permission (described in detail later in this Statement) that includes a condition preventing the sale of non-food retail goods. B&M's trading at the premises since c.2007 has been in breach of that condition for a period in excess of 10 years and accordingly, this application seeks confirmation that the condition is no longer applicable or in effect.
- 1.4 The application therefore seeks confirmation via a LDC under S.191 of the Town and Country Planning Act 1990 (as amended) ['the Act'] that a condition imposed on the relevant planning permission for the site is no longer in effect and is not enforceable.
- 1.5 Relevant evidence is included in the application, outlined in this Statement, which demonstrates the legal tests have been met and that accordingly, the CLD should be granted.

2. The Site

- 2.1 The site is situated on Shay Syke, c. 130m from the designated Halifax Town Centre boundary. The site currently comprises a B&M store and garden centre with associated parking. The B&M store is the only building on the site, with car parking to the front (west), south, and an open storage and yard area to the north of the building.
- 2.2 The site is located within the administrative area of Calderdale Council, which is the Local Planning Authority.

3. The Lawful Use

3.1 The lawful use of the site requires consideration of the relevant planning history and any relevant conditions or obligations alongside the occupational history of the premises. This section of the statement reviews the planning history of the site to provide an informed understanding of the lawful use.

Planning History

3.2 Our review of Calderdale Council's online planning history records for the site has identified the following records of relevance to this application.

Reference	Description	Approved
81/01106/FUL	Retail & trade warehouse for sale of builders materials, DIY goods, garden centre, parking etc.	Allowed at appeal
81/02252/FUL	Erection of non-food retail warehouse for the trade and retail sale builders merchants	Refused
84/02479/FUL	Greenhouses	Approved
92/02741/REM	Relaxation of condition 4 of 81/0110/FUL to include all non-food retail elements	Approved
93/02150/FUL	Alterations to shop consisting of relocation of loading doors to southern (side) elevation and relocation of main customer entrance doors to western (front) elevation of building	Approved
94/00224/REM	Removal of condition no.4 on planning application no. 81/01106	Approved
11/00423/FUL	Demolition of existing greenhouse, external alterations including sub-division of existing building, raising of the roof, re-cladding and construction of new entrance features, improvements to vehicular and pedestrian access, and reconfiguration of the car park and servicing arrangements	Approved (July 2011)

3.3 The Council's online planning history records has not found any more recent applications than those referenced above and contact was also made with the Council's offices which confirmed the same.

Lawful Use

3.4 The above confirms that planning permission was originally granted for retail development on the site under ref. 81/01106/FUL, subject to conditions. The principal

restrictive condition (4) of the permission was as follows (based on research of council notes online – it has not been possible to obtain the original decision notice):

“the premises shall be used only for the sale of builders merchants, home improvements and DIY goods and garden requisites and for no other purpose including any other purpose within Class I of the Schedule to the Town and Country Planning (Use Classes) Order 1972.”

- 3.5 Permission was granted in 1992 (ref. 92/02741/REM) to relax condition 4 to include all non-food retail elements. This resulted in fewer restrictions on the goods that could be retailed at the site, but still excluded food retail. The 1992 permission, dated 8th of January 1993, approved “Relaxation of condition 4 of 81/50/01106 to include all non-food retail elements” at the time, for the Do It All store. It imposed the following condition:
- 3.6 *“Notwithstanding the Town and Country Planning (Use Classes) Order 1987, the premises shall be used for the sale of non-food retail goods only, and for no other purpose (including any other purpose falling within Class A1 one of the said order).”*
- 3.7 An application to remove condition 4 altogether was then approved in May 1994 via permission ref 94/00224/REM. That permission imposed new conditions on the consent, as follows:
- (i) The use of the premises for food retailing shall not come into operation until a carriageway widening and associated white lining scheme has been implemented to the satisfaction of the Local Planning Authority, in accordance with the details which shall first have been submitted to and approved by the local planning authority. Unless otherwise agreed in writing by the Local Planning Authority, these details shall incorporate a pedestrian refuge.
 - (ii) No gates or barriers shall be erected within the site within a distance of 30 metres of the revised Shay Syke access constructed in accordance with the above details.
 - (iii) The use of the premises for food retailing shall not come into operation until the parking bays the staff and customer use and the proposed servicing area have been marked out in accordance with details which shall first have been submitted to and approved by the Local Planning Authority.
- 3.8 An assessment of the site as it stands today suggests that the above works were not carried out. Accordingly, there is no evidence that the 1994 permission was lawfully implemented as the actions required by conditions have not been carried out and there are no online records of details being submitted to the council to comply with conditions 1 and 3; and the occupational history also suggests there has not been food retail traded at the premises that would have been in breach of the conditions.
- 3.9 Notwithstanding, the effect of the approval of the 1994 permission, which removed condition 4 on the original 1982 consent, was to allow an open retail use (that would

formerly have been under Use Class A1 and following changes to the Use Classes Order 1997 (as amended) in 2022, would now be Class E(a).

- 3.10 In the absence of evidence to demonstrate that the conditions have been complied with, it appears that the 1994 permission has expired having not been implemented and the lawful use of the site reverts back to the 1982 original planning permission as modified by the 1992 permission which varied condition 4.
- 3.11 That being the case, then the restriction on non-food retail would remain in effect and the most recent planning permission for the site is that granted in 1982 (under ref. 81/01106/FUL) for "Retail & trade warehouse for sale of builders materials, DIY goods, garden centre, parking etc." as modified by the 1992 amendment (ref. 92/02741/REM), described as "Relaxation of condition 4 of 81/0110/FUL to include all non-food retail elements".
- 3.12 In conclusion, the planning permission permits all forms of retail without restriction, except for "non-food" retail, which is not permitted.

Occupational History

- 3.13 The current tenant, B&M, took occupation of the building in c.2007 and have been in continuous occupation and trading since then, considerably in excess of the minimum 10-year period relating to the enforceability of conditions.
- 3.14 Prior to B&M's occupation, the premises were occupied and traded as a carpet retailer and a DIY store and garden centre, consistent with the planning history outlined above. No further information relating to those periods is provided given it is not relevant to the CLD application and the 10-year period.
- 3.15 Evidence relating to B&M's occupation of the site is detailed in the following section.

4. Relevant Evidence

- 4.1 The LDC is sought on the grounds the breach of condition began more than 10 years before the date of this application. Section 191 of the Act provides as follows (relevant section highlighted):

S.191 Certificate of lawfulness of existing use or development.

- (1) *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.

- 4.2 Part (3) continues:

- (3) *For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—*
- (a) ***the time for taking enforcement action in respect of the failure has then expired; and***
 - (b) *it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force*

- 4.3 The application is made under S.191 (c) as above on the basis that the time for taking enforcement action has expired. Parts 4 to 6 continue as follows:

- (4) *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.*
- (5) *A certificate under this section shall—*
- (a) *specify the land to which it relates;*

- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);*
 - (c) give the reasons for determining the use, operations or other matter to be lawful; and*
 - (d) specify the date of the application for the certificate.*
- (6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.*

4.4 National guidance¹ states that the onus of proof in a LDC application for an existing use is firmly on the Applicant. In this respect, the relevant test of evidence is to demonstrate on 'the balance of probability' that a specified existing use is lawful for planning purposes.

4.5 Taking into account the legislation and guidance above, evidence to satisfy the planning authority of the lawfulness of the matter for which the certificate is sought is described in the following section.

¹ [Annex 8: lawfulness and the lawful development certificate \(LDC\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

5. Evidence of Lawfulness

Lease Agreements

5.1 This CLD application is accompanied by three leases confirming the tenants and the permissible uses under the terms of the leases. These leases are included with the application and a chronological summary of the agreements is provided below and also confirmed in Mr Macarthur's sworn affidavit.

- (a) Lease Agreement dated 21 December 1984 between Commercial Development Projects Limited and Paul Madeley (Holdings) Limited. The tenant (Paul Madeley) was the carpet retailer and the lease was drawn up for their proposed use. As a result, it did exclude the sale of food items (see page 19 of the lease) in accordance with the planning permission for the site at the time. Clause 4.16 (a) states *"Not to use or suffer the demised premises or any part thereof to be used otherwise than as a retail store for the sale of non-food items"*.

Paul Madeley Holdings ceased trading in 2007 and B&M succeeded them as tenants in that same year and took the extant lease on assignment. At the expiration of the original lease (in 2009) B&M held over under their rights granted by the Landlord and Tenant Act 1954 and after some negotiation signed two new leases in November 2011 for a period of 10 years. One lease covered the car park area and the other the covered the entrance, service yard, garden centre and the store.

It is understood that B&M's trade did include food retail from the outset of their occupation.

- (b) Lease Agreement dated 22 November 2011 between LSI (Halifax) Limited and B&M Retail Limited. The term of the agreement was 10 years (i.e. until 21 November 2021). The lease agreement defines the authorised use of the premises as a general variety retail store within Class A1 of the Town and Country (Use Classes) Order 1987. It expressly does not prevent non-food items be sold from the premises because B&M required the terms of the lease to reflect their trade, which did include food retail.

At the expiration of those leases (in November 2021) the tenant, B&M Retail Limited, again held over under their rights as protected by the Landlord and Tenant Act 1954. New terms were agreed after an extended period of negotiation (B&M remained in occupation of the premises throughout this period) and a single new lease was signed in October 2023 to replace the previous leases which amalgamated the two previous leases, so the whole site was once again subject to a single lease. This new lease is for a period of 5 years expiring in October 2028.

- (c) Lease Agreement dated 30 October 2023 between LSI (Halifax) Limited and B&M Retail Limited. The term of the agreement was 5 years (i.e. until 29 October 2028). The lease agreement defines the authorised use of the premises as a general variety retail store within Class A1 of the Town and Country (Use Classes)

Order 1987. It expressly does not prevent non-food items be sold from the premises because B&M required the terms of the lease to reflect their trade, which did include food retail.

Sworn Affidavit

- 5.2 This application is accompanied by a Sworn Affidavit (dated 28 February 2023), signed by Richard Macarthur a shareholder of LSI Halifax Ltd the freehold owner of this site since 2003. The letter confirms the chronology of the lease agreements set out above. It also confirms that the retail occupiers traded between 1984 to present day. This therefore demonstrates that the unit has been operating as a retail premises, occupied by B&M with food retail a core part of their sales at the premises for a period of more than 10 years without interruption.

Photographs of Food Retail

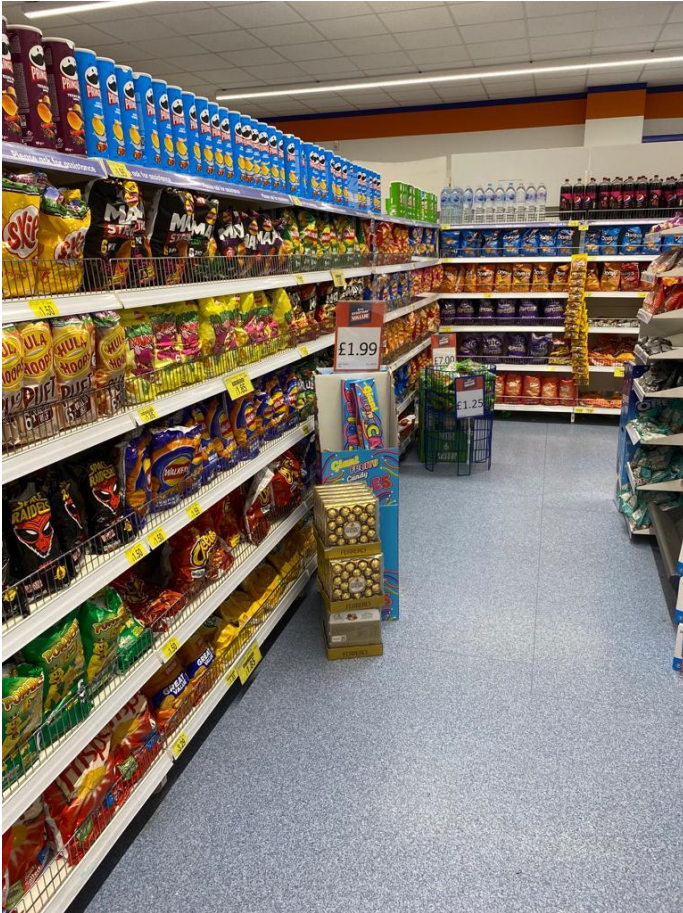
- 5.3 In addition to the above, **Appendix 1** to this Statement provides photographs of the inside of B&M's store and illustrates the range of food products retailed at their stores. This is a core component of their retail offer, as described on their website², a screenshot from which is included in **Appendix 2**.

² [Cheap Food and Drink | Buy Food, Drink, Confectionery & Crisps | B&M \(bmstores.co.uk\)](https://www.bmstores.co.uk)

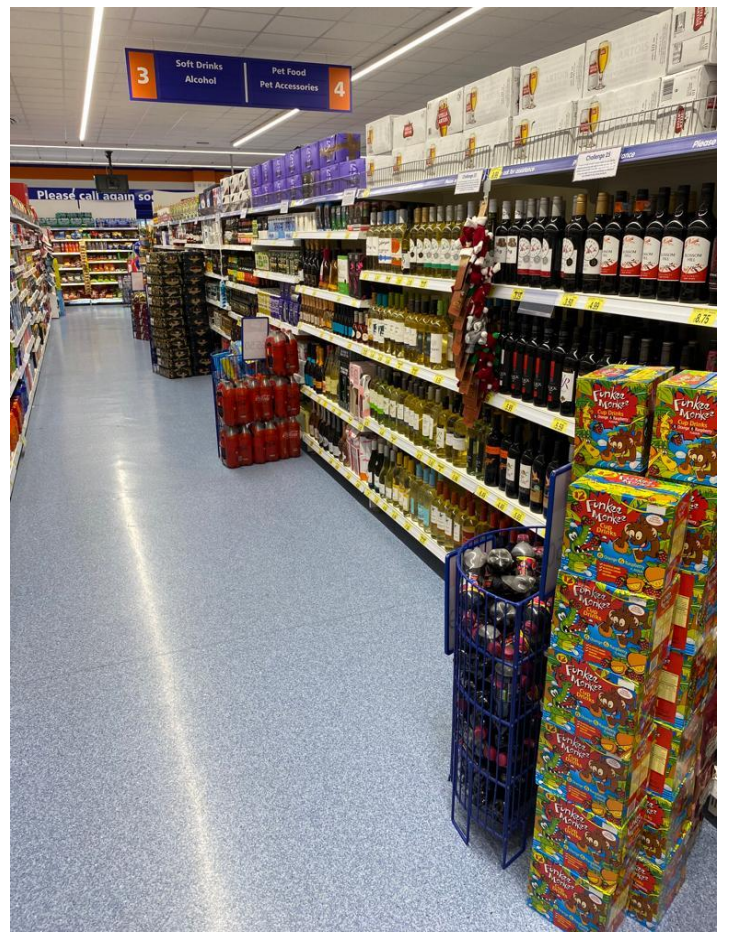
6. Conclusion

- 6.1 The CLD application provides evidence that the subject site has traded as a retail store (including the sale of food goods) for a period of more than 10 years without interruption as explained above.
- 6.2 The use of the site has been continuous and consistent as demonstrated by the enclosed evidenced and explained in this covering letter.

Appendix 1: Photographs of food product range in store







Appendix 2: B&M Website – Food Offer

Great Savings on Sheds and Fencing - buy online now with Free Delivery!

b.m. Big Brands Big Savings

Search Big Brands, Big Savings...

Stores **Managers Special** OFFERS

Menu Browse Categories Deals Trending Careers Lifestyle Newsletter Brands Social

HURRY... BEFORE THEY GO! Latest big brands now available in-store

FIND YOUR LOCAL STORE Want to know store opening times?

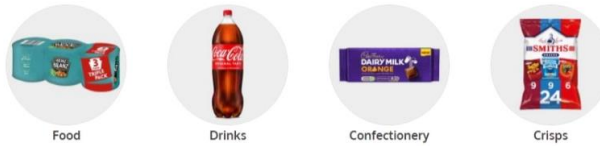
LATEST OFFERS AVAILABLE View all the latest offers now in-store

Home > Food & Drink

- Food & Drink**
- Food**
 - Chilled
 - Bakery
 - Breakfast
 - Biscuits & Crackers
 - Table Sauces & Dressings
 - Tinned, Canned & Packaged Foods
 - Pasta, Rice & Noodles
 - Baking Ingredients
 - Vegan & Free From
 - Drinks**
 - Soft Drinks
 - Alcohol
 - Tea, Coffee & Hot Drinks
 - Confectionery**
 - Chocolate Boxes
 - Chocolate Blocks & Singles
 - Chocolate Multipack
 - Chocolate Pouches & Bags
 - Sweet Multipacks & Pouches
 - Mints & Gum
 - International Sweets & Candy
 - Crisps**



Food & Drink



Food and Drink From Your Favourite Brands

The cheap groceries from B&M will enable you to tick off your weekly shopping list without having to break the bank.

Our excellent cheap food and beverage options will make grocery shopping a breeze - particularly as many of the products we offer from big brands sport surprisingly low price tags when compared with prices at other supermarkets!

Cheap Food

B&M offers some of the cheapest groceries around, including budget friendly ingredients and prepared foods that your family will love.

Save money when you go food shopping by picking up frozen and chilled meats, dairy products, baked goods, packaged foods and seasonings from B&M.

Cheap Drinks

From fizzy drinks, juice and squash to bottled water, tea, coffee, hot chocolate, alcohol and lunchbox drinks, you'll find all of your favourite products from leading brands at B&M for the best possible price.

Cheap Confectionery

Who doesn't love a treat?

We offer affordable confectionery for all occasions, including classy chocolate boxes, delicious chocolate bars, pouches of sweets, multipacks and even international goodies - for when you need a delicious reward, or just fancy being a little indulgent!

Cheap Crisps

Snacks are an important part of any meal plan, providing energy throughout the day and staving off hunger.

You can pick up your favourite crisps, nuts, crackers and more from B&M - many from top brands, and all for the best possible price.

Keep the costs of your weekly shop right down when you visit B&M's Food and Drink section.

You can also come to us for high quality, budget friendly Baby Food, Dog Food and Cat Food to keep the whole household happy!

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