

Delegated Decision

Sign off Sheet

Ref. No:	DM/24/3000	Case Officer:	Joanne Fisher
Application Type:	Lawful Development Certificate -Proposed		
Proposal:	Certificate of Lawfulness of Proposed Use or Development for Class E(g)(iii) light industrial use together with secondary Class E use of kart track and associated car parking.		
Site:	26 Gothard Green Way, Goddards Green, Hassocks, West Sussex, BN6 9ZJ, ,		
Validation Date	9 Dec 2024	Overall Expiry Date:	13 Jan 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	22 Jan 2025
Target Date:	3 Feb 2025	Recommending Officer Signature:	Joanne Fisher

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Stephen Ashdown	Date:	24 Jan 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/24/3000

**26 Gothard Green Way, Goddards Green, Hassocks, West Sussex, BN6 9ZJ, ,
Certificate of Lawfulness of Proposed Use or Development for Class E(g)(iii) light industrial use
together with secondary Class E use of kart track and associated car parking.
Mr Rich Austin**

SUMMARY OF REPRESENTATIONS

None.

SUMMARY OF CONSULTEES

None.

PARISH COUNCIL OBSERVATIONS

No comment.

INTRODUCTION

The application seeks a lawful development certificate for the proposed use or development for Class E(g)(iii) light industrial use together with secondary Class E use of kart track and associated car parking at 26 Gothard Green Way, Goddards Green.

RELEVANT PLANNING HISTORY

DM/19/2641 - Employment development comprising up to 40,695sqm (Class B1(b), B1(c), B2, and B8) with ancillary offices, car parking and associated infrastructure. Access to be determined. Approved.

DM/20/3649 - Removal of condition no 24 of application DM/19/2641, to remove restriction of use of the development prior to implementation and opening in full to public traffic of West Sussex County Council's "A2300 Improvements". Approved.

DM/20/3614 - Variation of condition 18 of application DM/20/3649 to provide a further 15,000 sqm capable of being occupied for Class B8 purposes. Approved.

DM/22/2676 - Application for approval of reserved matters on Plots 1-4 of landscape, appearance, layout and scale, to provide flexible employment units across use classes B1b, B1c, B2 and B8, with ancillary offices at The Hub, pursuant to permission DM/20/3614. (Amended Plans received on 01/12/2022 showing revised elevational treatments and additional landscaping information). Approved.

SITE AND SURROUNDINGS

The site is a purpose built building for commercial use within a recently constructed business park with parking for each unit. Unit 26 is set off the main access road to the east of the site and forms one large building. There are a number of unoccupied properties within the wider site of Gothard Green Way due to the site recently being completed.

The site lies within the built up area for employment land as defined in the Mid Sussex Site Allocations Development Plan Document, 2002.

APPLICATION DETAILS

The application is for a proposed lawful development certificate for the use of Unit 26 for Class E (g)(iii) light engineering, research and development, and testing of parts on a track at Unit 26, Panattoni Park, Gothard Green Way, Goddards Green.

The original permission for the commercial buildings on the site relates to classes B1(b), B1 (c), B2 and B8.

Class B1 (b) and B1 (c) now form part of Class E(g) of the Town and Country Planning Use Classes Order which relates to ii) the research and development of products or processes or iii) any industrial process, (which can be carried out in any residential area without causing detriment to the amenity of the area).

The application is accompanied by a covering letter which seeks to set out why the proposed use of the building would be lawful as well as an existing and proposed floor plan showing the internal layout of the building and the associated external parking.

The accompanying letter sets out that the business Austin Racing seeks to re-locate to the site and operate their business from. Austin Racing specialises in exhaust component assembly for motorcycles. It sets out that it is sought to use the building *'for B1/ B2 and B8 use (now Class E, B2 and B8 use) under Permission Reference DM/19/2461. The primary use of the site will be for employment under E(g)(iii)'* for the same use that has been operating at their current site outside of the District that the business has now outgrown.

The accompanying letter states that the key operations of the business currently are:

*'- The assembly and packaging of motorbike exhaust systems, component fitting and polishing.
- Assembly work is limited to the exhaust systems only which ensures that no noisy machinery is required in the process.'*

It sets out that it is sought to assemble electric kart chassis' to supplement the existing operations of the business. The business would also install a testing track within the building to test the electric kart chassis and performance parts on the proposed kart track within Austin Racing working hours which are to be manufactured on the site. However, they also *'wish to operate the kart track outside of working hours running for 1 day per working week from 4pm to 9pm and weekends from 2pm to 10pm. These sessions will be 30 minute pre-booked sessions for 8 people.'*

The covering letter sets out that the *'unit has a total internal floor area of approximately 28,000 square feet. The entire area will be utilised for E(g)(iii) light engineering, r and d and testing of parts on track. There will also be a canteen and office area.'*

The kart area will use approximately 18,500 square feet of this area - 2,500 square feet to sign on and use the canteen and viewing area. The kart track will utilise approximately 16,000 square feet of the total floorspace.'

LEGAL FRAMEWORK

This is an application to establish whether the proposed uses occurred on the date of the submission of the application and are therefore lawful. This will be a legal decision, where the planning merits cannot be taken into consideration. Therefore, there are no relevant planning policies for consideration.

Section 192 of the Town and Country Planning Act 1990 (as amended) relates to certificate of lawfulness of proposed use or development. This states:

*'(1) If any person wishes to ascertain whether—
(a) any proposed use of buildings or other land; or
(b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.'*

(2) 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; and in any other case they shall refuse the application.

(3) A certificate under this section shall—

- (a) specify the land to which it relates;*
- (b) describe the use or operations 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 or operations to be lawful; and*
- (d) specify the date of the application for the certificate.*

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.'

The National Planning Policy Guidance (NPPG) refers to lawful development certificates and states if *'the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate'*. In addition, *'Once a certificate has been granted following an application under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful, unless there is a material change before the use or development has begun (section 192(4))'* (Paragraph: 002 Reference ID: 17c-002-20140306).

In the submission of such an application the NPPG states that in *'the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.'* (Paragraph: 006 Reference ID: 17c-006-20140306)

The NPPG sets out that *'In determining an application for a prospective development under section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"'* (Paragraph: 009 Reference ID: 17c-009-20140306)

ASSESSMENT

Section 55 of the Town and Country Planning Act 1990 (as amended) states:

(1) 'Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.'

Schedule 2, Part A of the Town and Country Planning (Use Classes) Order 1987 (as amended) relates to Commercial, Business and Service and sets out:

'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.'

The key issues are whether the proposed use falls within Class E(g)(iii) of the Use Classes Order and that the kart track can be considered ancillary to the business.

It is considered that the commercial operations to be carried out on the site of the assembly and packaging of motorbike exhaust systems, component fitting and polishing as well as assembly to the exhaust systems falls within a light industrial use of industrial processes being carried out. The operations carried out by Austin Racing are considered to light industrial processes that can be carried out in any residential area without detriment to the amenity of that area by noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

The business is to have a kart track to assist in the testing of parts and electric kart chassis' which will be assembled on the site as part of the business. From the information set out in respect of the kart track it is considered that the primary use of the site will remain as E(g)(iii) light industrial and the kart track use will be an ancillary use to the business for the testing of parts for business purposes. Whilst the kart track would be open to the public for leisure use on the reduced hours set out in the application details of 3 days a week (1 evening during the working week and at weekends) this is not considered to be the predominant use of the site.

It is worth noting that if the leisure use of the kart track were to expand and operate for longer hours, a change of use application to sui generis would need to be submitted for consideration.

The information provided is considered to be clear and precise and the LPA has no evidence to contradict the submissions contained within the application that the uses to be carried out would fall under Class E(g)(iii) with secondary Class E use for the kart track.

In view of the above, the proposed development is considered lawful.

CONCLUSION

In conclusion, the use of the building for Class E(g)(iii) light industrial use with the kart track as an ancillary use provided for the business to test parts produced on the site is deemed lawful and is found to comply with relevant legislation set out under the Town and Country Planning Act 1990 and the Town and Country Planning (Use Classes) Order 1987 (as amended),

It is therefore recommended that the Lawful Development Certificate for proposed use be approved.

Decision: Permission

Case Officer: Joanne Fisher