

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/3252	Case Officer:	Joanne Fisher
Application Type:	Lawful Development Certificate -Existing		
Proposal:	Submission of application for a certificate of existing lawful development for confirmation that planning permission is not required to use the premises for class E(d) indoor sport/ leisure/ recreation uses.		
Site:	Unit 4, Link 23, Nursery Lane, Warninglid, Haywards Heath, West Sussex, RH17 5JS,		
Validation Date	10 Feb 2026	Overall Expiry Date:	26 Jan 2026
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	22 May 2026
Target Date:	7 Apr 2026	Recommending Officer Signature:	<i>Joanne Fisher</i>

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	<i>Stephen Ashdown</i>	Date:	22 May 2026
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/3252

Unit 4, Link 23, Nursery Lane, Warninglid, Haywards Heath, West Sussex, RH17 5JS

Submission of application for a certificate of existing lawful development for confirmation that planning permission is not required to use the premises for class E(d) indoor sport/ leisure/ recreation uses.

Evgenia Augustine

SUMMARY OF REPRESENTATIONS

None

SUMMARY OF CONSULTEEES

NatureSpace

No comments

PARISH COUNCIL OBSERVATIONS

SPC, object. There is no noise survey, reference to a traffic plan and the large signage erected is not included in the application.

INTRODUCTION

The application seeks a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990 to confirm whether planning permission is required for the use of Unit 4 for Class E(d) - indoors sport / leisure / recreation uses.

RELEVANT PLANNING HISTORY

DM/16/4657 - Outline application for the demolition of existing garden centre buildings, former residential unit and dog day care centre, associated structures and hardstanding and the erection of two industrial units accommodating 7,800sq.m of floorspace for class B1(b)/B1(c)/B8 use. Approved.

DM/19/0597 - Reserved matters application in respect of outline planning permission DM/16/4657 for the approval of the appearance, landscaping and layout for the erection of two industrial units accommodating 7,800sqm of floorspace for Class B1(b)/B1(c)/B8 use including the erection of a 3.5metre high acoustic fence. (This scheme is identical to that of the previous submission DM/18/0938 in terms of floorspace applied for, however, the building heights of units 2, 3 and 4 have increased from 8m to 10m from ground level to the ridge. Unit 1 is remaining the same height). Approved.

SITE AND SURROUNDINGS

The site is set off Nursery Lane which runs adjacent to the A23.

The wider site of Link 23 comprises of two large purpose-built commercial buildings which are occupied by a number of different businesses. Unit 1 is set to the north of the site and occupied by Pets Corner. Unit 2 is set to the west of the site and is subdivided into 3 smaller commercial units occupied by 3 different businesses. To the front of unit 2 is a large area of hardstanding providing car parking to the site.

The site is within the countryside and the High Weald Area of Outstanding Natural Beauty (HWAONB) as defined in the District and Neighbourhood Plans.

APPLICATION DETAILS

The application seeks a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990 to confirm whether planning permission is required for the use of Unit 4 for Class E(d) - indoors sport / leisure / recreation uses.

The applicants submit that that planning permission is not required for use the premises for class E(d) indoor sport / leisure / recreation as they consider the use is allowed within the planning permission granted for the unit and that there has been no development.

A Planning Statement accompanies the application which sets out that *'Following the grant of planning permission and completion of works, Maker & Son Limited occupied the unit. The company operated a Class B8 (storage and distribution) use in accordance with the planning permissions granted (application refs: DM/19/0597 and DM/16/4657). The company vacated the premises in January 2023, and the building remained unoccupied until 14th January 2024 when the Padel Hub moved in.'*

The Planning Statement goes on to state that *'Class B1 (b) and (c) uses permitted within the commercial unit on the site would now fall within use Class E, the unit is now in use for purposes within Class E (d) indoor sport / leisure / recreation uses.'*

The use of the unit for any use within Use Class E (Commercial Business and Service) would be lawful and would not constitute development that requires planning permission. Section 55 (2)(f) of the Town and Country Planning Act 1990 confirms that changing between uses within the same Use Class is not development'.

The Planning Statement confirms that no external alterations have been carried out to the building to facilitate the use and that there are only minor internal alterations.

LEGAL FRAMEWORK

Section 191 of the Town and Country Planning Act 1990 relates to certificate of lawfulness of existing use or development and states:

*'(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.'

This application seeks to confirm whether the use of the building as Class E of the Town and Country Planning (Use Classes) Order 1987 Order (as amended) is permitted development.

The original planning permission for the commercial units granted the use of the site as Class B1(b)/B1(c)/B8 use. Class B1 (business) was amended to Class E (commercial, business and service) under Article 3, Schedule 2 in September 2020. Class E(d) relates to indoor sport, and recreation but excludes swimming pools, ice rinks, motorised vehicles or firearms). Class B8 (storage and distribution) remained the same.

Schedule 1, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) relates to change of use. This sets out under Part 3, Class P that the change of use from storage or distribution centre to dwellinghouse is permitted development subject to a number of criteria. However, it does not allow Class B8 to change use to Class E under permitted development.

Section 55 of the Town and Country Planning Act sets out the meaning of development and 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.

[(1A) For the purposes of this Act "building operations" includes—

- (a) demolition of buildings;*
- (b) rebuilding;*
- (c) structural alterations of or additions to buildings; and*
- (d) other operations normally undertaken by a person carrying on business as a builder.]*

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

- (i) affect only the interior of the building, or*
- (ii) do not materially affect the external appearance of the building,*

and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;

(b) the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment];

(c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;

(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;

(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.

(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.'

ASSESSMENT

As this is not a planning application, the planning merits of the development are not relevant. The test is to establish whether the change of use of the building is permitted development and does not require planning permission.

The description of the original planning permission of the site for commercial use was for the buildings to be used for purposes under Classes B1(b), B1 (c) and B8 use. Class B1(b) is for research and development of products or processes, B1(c) is any industrial process and B8 is storage and distribution.

Condition 1 of the outline permission (reference DM/16/4657) states:

'This outline application permits the construction of two industrial units with a maximum ridge height of up to 10 metres and a maximum overall floorspace of 7,800 sqm for use under Class B1 (b), B1 (c) and B8.

Reason: In the interests of the appearance, character and amenity of the area and to accord with Policy B1 of the Mid Sussex Local Plan and Policy DP24 of the Mid Sussex District Plan 2014-2031 Submission Version.'

In September 2020, the Use Classes Order 1987 was amended which came into force in April 2021. As part of this a new Class E was created relating to commercial business and services. Class B1 was amended to this new Class E, however, Class B8 (storage and distribution) remained the same and is under a separate use class. Regulation 7 of the 2020 Regulations provides [emphasis added] that:

"For the purposes of the Use Classes Order, if a building or other land is situated in England, and is being used for the purpose of one of the following classes which were specified in Part A or B of the Schedule to that Order on 31st August 2020, as—

- (a) Class A1 (Shops),*
- (b) Class A2 (Financial and professional services),*
- (c) Class A3 (Restaurants and cafes), or*
- (d) Class B1 (Business),*

that building or other land is to be treated, on or after 1st September 2020, as if it is being used for a purpose specified within Class E (Commercial, business and service) in Schedule 2 to that Order."

Notwithstanding this, a High Court decision considered how courts interpret planning conditions which restrict the use of buildings. Lazari Properties 2 Limited v Secretary of State for Levelling Up, Housing and Communities 2023 [EWHC] found that the restricting condition in this case, although not expressly excluding the operation of the Use Classes Order, did exclude its application and the introduction of Class E did not change the effect of the condition to restrict the use of the property. As such, even when legislation changes, the existing planning condition limiting the use would continue to remain restricting the use of the building.

In light of the above, whilst there was no express exclusion of the use class order, condition 1 of the outline permission for the site contains a clear limitation on the use of the buildings for research and development, industrial processes or for storage and distribution. This planning condition limits how the buildings can be used and disappplies the operation of the use class order to allow Class E now to be applied. The buildings on the whole of the site including unit 4 cannot therefore benefit from the flexibility of Class E and is restricted by condition which is explicit in the uses of the building.

The planning condition prohibits changes within the use class to be permitted development, and permission is sought for the change of use of the building to Class E(d) (indoors sport / leisure / recreation) for use. The change of use is not considered to be lawful, and a planning application is required to be submitted for full consideration.

Other matters

The comments of the Parish Council are noted. However, as the application is for a lawful development certificate to confirm whether planning permission is required. Such an application does not require documents in relation to a noise or traffic survey. In addition, the comments in respect of the signage is a matter for the Investigation Team to consider.

CONCLUSION

Condition 1 of the outline approval reference DM/16/4657 expressly limits the buildings to be used for Class B1(b), B1(c) or B8 purposes under the Town and Country Planning (Use Classes) Order 1987 Order (as amended). Permission would be required to change the use of the building to Class E as the condition restricts the building being used for any other purpose.

The proposal therefore cannot be considered to be lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended).

Decision: Refusal

Case Officer: Joanne Fisher