

DELEGATED REPORT

Application No:	P/24/0215
Site Address:	Unit A Pengarnddu Industrial Estate Dowlais Merthyr Tydfil CF48 2TA
Development:	Certificate of lawfulness for the proposed occupation of Unit A, Pengarnddu Industrial Estate, by Dunelm (A1 use class)
Case Officer:	Marlene Ferreira
Application Expiry Date:	6th November 2024

APPLICATION SITE

The application site relates to a large, detached retail unit measuring approximately 43 metres wide and 78 metres deep, known as Unit A, at Pengarnddu Industrial Estate. The unit provides approximately 3500m² of floor space and is currently occupied by Poundstretchers, a retail business within Use Class A1. It sits within the vicinity of 2 other large units, one which is occupied by Carpertright and one occupied by B&M Bargains. These units are served by an extensive car parking area which appears to be shared amongst all 3 businesses.

PROPOSED DEVELOPMENT

This is an application submitted under section 192 of the Town and Country Planning Act 1990 (as amended) for a Certificate of Lawful Proposed Use or Development (CLPUD) for the occupation of the unit by Dunelm.

The submitted plans indicate that the proposed Dunelm store, a retail business within Use Class A1, would be served by a small ancillary café area with a floor area of approximately 120.5m², which would amount to a very small percentage of the total floor space.

PLANNING HISTORY

The Council's planning history records for this site, are as follows:

- P/09/0315 - Erection of 2 free standing directional signs – Approved: 25th January 2010
- P/09/0192 - Change of use of 3 parking bays for the provision of a hot food takeaway vehicle (retrospective) – Approved: 3rd September 2009

- P/05/0680 - Advertisement signage (Retrospective) – Approved: 8th February 2006
- P/99/0334 - Addition of two directional slats to existing 5m totem sign – Approved: 22nd October 1999
- P/99/0028 - Non-illuminated 5m totem system – Approved: 11th March 1999
- P/98/0463 - Non-illuminated 5m totem sign at entrance to Business Park – Refused: 7th January 1999
- P/95/0040 - 2 No. internally illuminated box fascia signs and 1 No. non illuminated panel fascia signs – Approved: 28th April 1995
- P/94/0112 - Erection of internally illuminated static signs – Approved: 6th May 1994
- P/93/0410 – 2 pole illuminated signs – Refused: 17th June 1994
- P/91/0132 – 1 free standing directional sign – Refused: 13th November 1991
- P/89/0371 - Retaining wall and perimeter fencing – Approved: 21st August 1989
- P/88/0644 - Three externally illuminated fascia signs – Approved: 31st August 1988
- P/87/0845 - Erection of DIY retail warehouse unit (3250sq m) – Approved: 16th October 1987
- P/86/0831 - Construction of 1 No. industrial Unit and 2 No. retail warehouses, with associated car parking – Approved: 16th January 1987

CONSULTATIONS

None are applicable under certificate of lawfulness applications.

PUBLICITY

None are applicable under certificate of lawfulness applications.

POLICY CONTEXT

As this is an application for a CLPUD for the occupation of the unit by a retail business, Dunelm, the planning merits of the case are not under consideration. The planning policies are therefore not relevant to the determination of this application.

The decision is based on the ‘balance of probability’ and rests on the submitted evidence, the facts of the case and any relevant planning law.

PLANNING CONSIDERATIONS

Issues

This application seeks to establish that the occupation of the retail unit by Dunelm does not require planning permission. Thus, the applicant must provide evidence to demonstrate that, in the first instance, the unit has permission to be used for retail purposes and that this permission has been implemented, and/or that in the second instance, the use of the unit as a retail business has been continuous for a period of 10 years or more.

Therefore it needs to be satisfied that the evidence submitted by the applicant in support of this application is sufficient to prove that, on the balance of probability, the proposed occupation of the unit by Dunelm does not require planning permission.

Evidence Submitted

The evidence provided with the CLPUD comprises of the following:

- Planning Decision Notice: P/86/0831 – Construction of 1 no. Industrial Unit and 2 no. Retail Warehouses with associated parking – Approved with conditions: 16th January 1987
- Planning Decision Notice: P/87/0845 – Erection of DIY retail warehouse unit (3,250sq. m) Approved (without conditions): 16th October 1987.

No other evidence has been submitted with the planning application.

In the supporting letter it sets out that the applicant, Dunelm Ltd, seeks to purchase the unit with the intention of occupying and trading from it in the near future. The applicant therefore seeks confirmation that the proposed use of the unit by Dunelm does not require any additional planning permissions.

It states that ‘...the current occupier of the site, Poundstretcher, have traded from it without enforcement action for a period in excess of 8 years...’ and ‘...condition 1 of planning permission P/86/0831, imposed a restriction on the goods that can be sold from the unit. A reasonable proportion of the products sold by Poundstretcher’s fall outside of these set out in the condition...’

The letter goes on to explain that the ‘...subsequent 1987 permission, P/87/0845, does not include any planning conditions which seek to control or limit the range of goods that can be sold from the floorspace. The permission therefore allows for, in effect, an unrestricted Class A1 use...’

Furthermore, the letter clarifies that ‘...the long-term occupation of the unit by Poundstretcher is considered to comprise evidence that the Council accept that planning permission P/87/0845 comprises the prevailing permission for the site. As set out above, the permission does not restrict the range of goods that can be sold from the site...’

The letter therefore concludes that ‘...accordingly, planning permission is not required by Dunelm to enable them to occupy the site and commence trading from it...’

Council Information

In seeking to establish the historic use of the site, the planning history for the site was considered. It would appear that the most relevant planning history would be permissions P/86/0831 and P/87/0845.

The original application in 1986 (P/86/0831) proposed the construction of 1 industrial unit and 2 retail warehouses with associated car parking. The application, which includes the site in question, was approved on 16th January 1987 with 11 planning conditions, one of which (condition 1) states:

1. *This approval relates strictly to the uses application for viz: 1 no. DIY store (35,000 sq ft), 1 No. retail furniture warehouse (40,000 sq ft) and 1 No. Industrial Unit (20,000 sq ft) – use class III/IV and no other retail or other use.*

The subsequent planning application in 1987 (P/87/0845) proposed the erection of a DIY retail warehouse unit (3250sqm). This application described as Unit F Pengarnddu Industrial Park, relates to the site in question, and is now known, and referred to above, as Unit A Pengarnddu Industrial Estate. This application was approved on the 16th October 1987 without planning conditions and as such, does not restrict the retail use to a DIY store only.

Following consideration of the above permissions, it would appear that the use of the unit as a DIY retail store might be lawful under the P/86/0831 permission. However, there are no plans available to identify which part of the condition relates to Unit A, i.e. is it restricted to a DIY store, furniture warehouse or industrial use.

Further investigation of the historic use of the property was undertaken, which included an assessment of the Council's business rates records, to establish whether the P/87/0845 permission, with unrestricted DIY/retail use, may have been implemented. The Council's records going back to 1987 are limited so it is difficult to conclude with a degree of certainty whether the P/87/0845 permission was actually implemented. This would suggest that there is a possibility that Unit A may still be bound to the conditions set out in the earlier P/86/0831 permission, albeit, it is not clear which part of the condition relates to Unit A. Therefore, it has not been possible to conclude whether Unit A is bound by the conditions of the P/86/0831 permission.

Accordingly, it is appropriate to consider the historic use of the building to determine whether Unit A has been used for retail purposes for a continuous period of at least 10 years, which would render its retail use lawful and immune from any potential enforcement action or breach of condition.

The photographic evidence on google maps, which dates back to April 2011, shows that Unit A was previously occupied by the following:

- April 2011: No Frills Superstore;
- May 2018 to November 2021: Subdivided into Pet Hut and Poundstretcher
- May 2022 until August 2024: Poundstretcher.

Therefore this suggests that the unit has been used as retail purposed (within Use Class A1) for a period of over 10 years.

Further information gathered from the Council's business rates records confirms that between November 2013 and April 2022, the unit has been used as an A1 retail store and the timeline is shown below:

- 7th November 2013 - 31st January 2016: Buyology Ltd (retail sales)

- 16th February 2016 - 21st April 2022: Poundstretcher Ltd (retail sales)

Following a site visit to the unit, on the 8th August 2024, it was noted that the unit continues to be occupied by Poundstretcher, remains operational and open to the public.

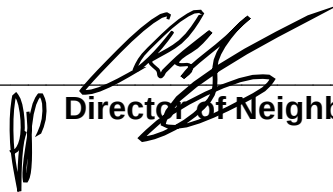
CONCLUSION

Based on the information available and the above assessment, it has not been possible to establish whether Unit A was bound by the conditions of the P/86/0831 permission. Nor has been possible to confirm whether the P/87/0845 permission was implemented, enabling Unit A to be used for retail purposes within Use Class A1, effectively without any restrictions, given that this permission did not impose any conditions. If this were the case, it would suggest that the retail use of the building by Dunelm would be lawful. Notwithstanding this, there is sufficient evidence to indicate with a degree of certainty that Unit A has been used continuously for a period of at least 10 year for retail purposes within Use Class A1. This would also coincide with the possibility that the P/87/0845 was perhaps indeed implemented. Accordingly, it is considered that the occupation of the property by Dunelm for retail purposes within Use Class A1 would be lawful under section 192 of the Town and Country Planning Act 1990.

RECOMMENDATION: BE APPROVED for the following REASON:

On the balance of probability, it has been sufficiently demonstrated that the building has been used for retail purposes within Use Class A1 without restriction for a continuous period of at least 10 years. Therefore the proposal does not constitute development that requires planning permission.

RECOMMENDATION ENDORSED



Director of Neighbourhood Services

DATE: 01.11.2024