

DELEGATED REPORT

Application No: P/21/0156

Site Address: Unit 13
Cyfarthfa Retail Park
Swansea Road
Merthyr Tydfil
CF48 1HY

Development: Certificate of Lawfulness for the sub-division of Unit 13
as two units with Use Class A1

Case Officer: David Cross

Application Expiry Date: 15th June 2021

Consultation reply date expired:

APPLICATION SITE

This application relates to an existing retail unit that was previously occupied by Game and Carphone Warehouse and forms part of the established Cyfarthfa Retail Park. The property is situated to the west of the main retail park with McDonalds to the north-west and KFC to the south. The main highway serving the retail park and surrounding area is situated to the east with the car park serving the application site to the south-west.

PROPOSED DEVELOPMENT

A certificate of lawfulness is sought under Section 191 of the Town & Country Planning Act for the existing subdivision of Unit 13 in to two retail units (within Use Class A1), each with a floorspace of approximately 178sqm and 117sqm.

The planning application for Cyfarthfa Retail Park (Ref P/02/0514), which includes Unit 13, was granted permission subject to various conditions, of which condition 7 states:

'Unless otherwise permitted by virtue of the current planning application, none of the retail units hereby approved shall be subdivided so that the gross retail floorspace of a single user/unit is less than 1,858sqm (20,000sqft)'

Given that the size of the retail units falls below the above mentioned threshold, the subdivision of the building would be in breach of condition 7. However, evidence has been provided in support of this application to demonstrate that the building was subdivided more than 10 years ago and without any enforcement action being pursued. Therefore, the applicant has set out in their supporting statement that the subdivision of the property is now immune to any enforcement action and that the development is now lawful.

In support of this application the following information has been submitted:

- Google Streetview images to illustrate the use of the building by Carphone Warehouse and Game since 2009.
- Copies of legal documents between Carphone Warehouse and the applicant to undertake internal alterations to accommodate two retail units, dated 2008.
- Reference is made to a planning application (P/08/0099) for the provision of a new shop entrance to facilitate the subdivision of the building, which was granted permission in 2008.

PLANNING HISTORY

P/21/0113 - Change of use from former Carphone Warehouse and Games store (Use Class A1) units to form two food and drink establishments (Use Class A3).

Permission GRANTED on 24.05.2021

P/08/0099 - Installation of double doors with infill panels to front elevation.

Permission GRANTED on 14.04.2008

P/02/0514 - Erection of retail park including A1 and A3 units, health and fitness (D2), covered builders yard and garden centre. Associated carparking, servicing and access roads.

Permission GRANTED on 10.06.2003

CONSULTATION

No consultation exercise was undertaken.

PUBLICITY

No publicity exercise was undertaken.

POLICY CONTEXT

The determination of this application does not require consideration of the planning merits of the proposed use. Therefore, the policies in the Merthyr Tydfil Replacement Local Development Plan (LDP) 2016-2031 are not of direct relevance in so far as they go to the merits of the proposed use.

Welsh Office Circular 24/97: Enforcing Planning Control, Annex 8, deals with 'Lawfulness and the Lawful Development Certificate':

Paragraph 8.3 states by virtue of Section 191(2) of the Town & Country Planning Act 1990, uses and operations are 'lawful' if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3) of the same Act, a failure to comply with any condition or limitation subject to which planning permission has been granted is 'lawful' if the time for taking

enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.

Paragraph 8.14 notes that where the local planning authority are provided with information satisfying them of the lawfulness, at the time of the application, of the use, operation or other matter described in the application, they shall issue a certificate to that effect and in any other case they shall refused the application.

PLANNING CONSIDERATIONS

The main consideration of this application is whether sufficient evidence has been provided to demonstrate that the subdivision of the Unit 13 occurred more than 10 years ago and that the building has since been operating as two separate retail units.

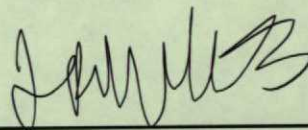
A planning application (Ref: P/08/0099) was submitted in 2008 for the installation of double doors with infill panels to the front elevation of Unit 13. It can be clearly seen on the approved plans that the building was internally subdivided and that the new entrance was proposed to accommodate an additional store. To corroborate this, a number of Google Streetview images have been provided dated 2009, 2015, 2017 and 2018, which illustrate the operational use of the building as two separate units for a period of at least 10 years. Furthermore, copies of the legal agreements (dated 2008) between Carephone Warehouse and the applicant have been provided to demonstrate that changes were made to the tenancy agreement and that alterations to the building were agreed in order to subdivide the store. A promotional brochure, which set outs the various operators within the various units at the retail park (dated 2018), notes the presence of both Carphone Warehouse and Game within Unit 13. It has been highlighted by the Council's revenue/business rates department that there was a significant decrease in the rateable value of Unit 13 in 2008, which is usually indicative of a premise being subdivided.

Based on the information provided it has been adequately demonstrated beyond reasonable doubt that Unit 13 was subdivided in 2008 and that it has operated as two separate retail units for a continuous period of at least 10 years. During this period of time, it is acknowledged that no enforcement action has been pursued in response to the breach of condition 7 of planning permission P/02/0514. Accordingly, the subdivision of Unit 13 is now deemed to be lawful development.

RECOMMENDATION: the certificate of lawfulness **BE APPROVED**

1. On the balance of probability, sufficient evidence has been provided to demonstrate that the building has been subdivided and used as two separate retail units for a continuous period of at least 10 years.

RECOMMENDATION ENDORSED



Head of Town Planning

DATE:

25/05/21