1.0 INTRODUCTION

1.1 This statement has been prepared by RCC Town Planning Consultancy in support of an application made by Mr H. Cole for a Lawful Development Certificate for a balcony structure erected on the rear of the application building located within the area outlined in red on the submitted location plan and as shown on the submitted block plan.

1.2 This statement sets out the legal provisions of the application, provides details of the structure that has been erected and an assessment of the relevant permitted development rights.

2.0 LEGAL PROVISIONS

2.1 Section 57 of the Town and Country Planning Act 1990 directs that all operations or work falling within the statutory definition of 'development' require planning permission. However, there are different types of planning permission, including national grants of permission by the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) which allow certain building works and changes of use to be carried out without having to make a planning application.

2.2 In the case of this submission, the relevant section is Schedule 2, Part 7, Class H of the GPDO which affords permitted development rights for development consisting of the erection, extension or alteration of an industrial building or warehouse.

2.3 Section 191 of the 1990 Act makes provision for a formal application to be made for a certificate of lawful existing development. This sets out that uses and operations are lawful at any time where no enforcement action may be taken in respect of them, whether because they did not involve development or require planning permission or because the time for enforcement action has expired. In summary, lawful development is 'development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required'.

2.4 The NPPG covering Lawful Development Certificates sets out at paragraph 009 that in determining an application:

'*A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process*.'

3.0 SITE DESCRIPTION, PLANNING HISTORY AND DEVELOPMENT PROPOSAL

3.1 The application site comprises an employment building occupied by the applicant (units 10A and 10B) and the surrounding land. The site is situated on the northwest

side of the Dunkirk Business Park located just beyond the village of Southwick. The building is used for the design and manufacture of face masks. This employment use would have fallen within the old B1 use class but is now within classes E(g)(ii) light industrial processes of the Town and Country Planning (Use Classes) (Amendment) Regulations 2020.

3.2 The application building is constructed in red brick with dark green corrugated metal cladding at first floor level and a grey corrugated metal clad roof. The site does not lie within a National Park, a conservation area, an AONB or a World Heritage Site and as such the building is not on article 2(3) land for the purposes of the GPDO. Figure 1 below shows the context of the site.

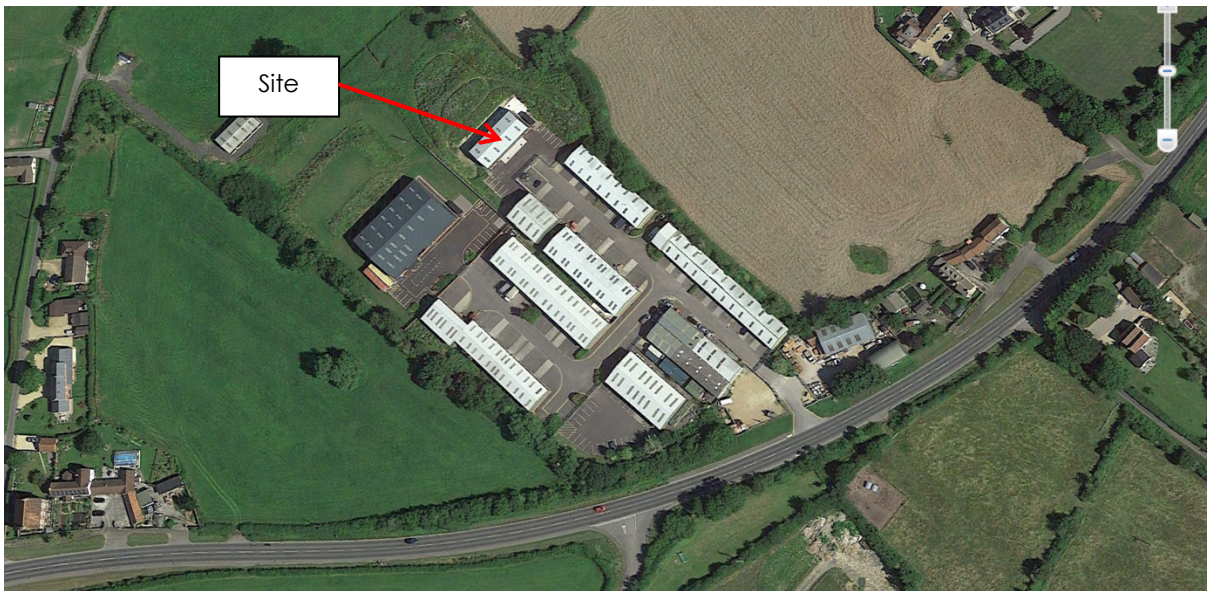


Figure 1 – Site context

3.3 In terms of relevant planning history relating to this site, planning permission was approved in September 2018 for the erection of 2 employment units (classes B1/B8) and associated works (18/06221/FUL) on land to the northwest of the Dunkirk Business Park.

3.4 A subsequent application for planning permission was granted in August 2019 (19/05839/FUL) for the erection of 3 employment units (classes B1/B8) and associated works. The building housing units 1 and 2 of this permission had the same floor area as Unit 1 approved under the previous planning permission (18/06221/FUL) but was located further back on the site than previously approved. It is this building and the surrounding land that constitutes the current application site. The third unit included in this permission is a larger detached building located to the southwest. There are no conditions attached to the planning permission that remove permitted development rights to extend or alter the buildings.

3.5 This submission relates to a partially decked balcony structure that has been erected on the north-western (rear) elevation of the building wrapping around part of the north-eastern (side) elevation as shown on the submitted drawings. At its highest

point, the balcony is 4.19m in height and measures 97.89sq metres gross floor space (the decked area is 61.52sqm and undecked areas on either side are 36.37sqm). The structure has a supporting metal frame with a metal balcony enclosure and handrail at first floor level in a dark green finish to match the colouring of the cladding on the original building. A galvanised steel walkway creates the balcony decking. The new structure includes undecked areas at either end of the decking with horizontal timber beams.

4.0 ASSESSMENT

4.1 The balcony structure that has been erected on the rear of the building should be assessed under Class H of Part 7, Schedule 2 of the GPDO which affords permitted development rights for development consisting of the erection, extension or alteration of an industrial building or warehouse. These general permitted development rights are subject to certain limitations whereby development is not permitted (set out in part H.1) and conditions (set out in part H.2).

4.2 Units 10A and 10B occupy a single building that is used and operated by the applicant. The units share parking spaces, manoeuvring area and service facilities and there is no physical division of the land surrounding the building. As such they should be treated as a single original building for the purposes of Class H.

4.3 The balcony structure will therefore be assessed against these limitations and conditions to ascertain whether it meets the requirements of Class H.

4.4 The limitations set out in part H.1 are addressed below:

(a) the site in question is not located on article 2(3) land or on a site of special scientific interest and the gross floor space of the new balcony structure erected amounts to 97.89 square metres and therefore does not exceed the limitations of 200 square metres,

(b) the gross floor space of the original building is 251.89 square metres and therefore the balcony structure does not exceed this by more than 50%.

(c) this application does not relate to a new building,

(d) the height of the balcony structure measures 4.19m and does not exceed the height of the building being extended or altered

(e)no part of the development would be within 5 metres of any boundary of the curtilage of the premises,

(f)the development has not led to a reduction in the space available for the parking or turning of vehicles, and

(g)the development is not within the curtilage of a listed building.

4.5 The proposal therefore complies with the limitations set out in part H.1.

4.6 Consideration will now be given to the conditions listed in part H.2 and whether the development complies with these requirements. We can confirm that:

(a) the balcony structure is located within the curtilage of an existing industrial building,

(b) the building as erected, extended or altered is only used for the carrying out of an industrial process for the purposes of the undertaking, for research and development of products or processes, or the provision of employee facilities ancillary to the undertaking,

(c) the building that has been extended or altered by the addition of the balcony is not used to provide employee facilities:

(i) between 7.00pm and 6.30am, for employees other than those present at the premises of the undertaking for the purpose of their employment; or

(ii) no quantity of a dangerous substance is present at the premises of the undertaking in a quantity equal to or exceeding the quantity listed in the entry for that substance in Parts 2 or 3 of Schedule 1 to the Control of Major Accident Hazards Regulations 1999,

(d) the application does not relate to a new building, and

(e) the building is not located on article 2(3) land, but in any event, the balcony has been constructed using materials which have a similar external appearance to those used for the building being extended or altered.

4.7 The proposal therefore meets the conditions set out in part H.2.

4.8 The proposal therefore fits within the above criteria and as such benefits from the permitted development rights associated with Class H, Part 1, Schedule 2 of the GPDO as amended and therefore the development does not require an application for planning permission.

4.9 Furthermore, no permitted development rights for extensions and alterations have been removed from the property with regards to this proposal and as such the scheme is lawful.

5.0 CONCLUSION

5.1 This application has clearly demonstrated with appropriate evidence that the balcony structure that has been erected at the application site the subject of this submission, constitutes permitted development.

5.2 As such, we request that the Council grant this application and approve the Certificate of Lawfulness – existing development.