

## 7 JUNE 2022 PLANNING COMMITTEE

**6D PLAN/2021/1316**

**WARD: Mount Hermon**

**LOCATION:** Mascot Harven School of English, Coley Avenue, Woking, Surrey GU22 7BT

**PROPOSAL:** Certificate of Lawfulness for the proposed use as a day school (Use Class F1).

**APPLICANT:** Compass Schools

**OFFICER:** Gillian Fensome

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### **REASON FOR REFERRAL TO COMMITTEE:**

The application has been referred to Planning Committee by Councillor Johnson

### **PROPOSED DEVELOPMENT**

The application has been submitted under the provisions of Section 192 of the Town and Country Planning Act 1990 (as amended) to seek a Certificate of Lawful Development for a Proposed use or development for (using the applicant's wording): "the use of the site as a day school (Class F1)." The building was last in use as a language school for English. The applicant is seeking to demonstrate that the proposed use falls within the same use as the existing and is therefore not development and planning permission is not required. The applicant has confirmed the age of children that would attend would be 7-17 years old and it would operate like any other day school i.e.- during normal school times, Mondays to Fridays and during term times.

### **PLANNING STATUS**

- Thames Basin Heaths SPA Zone B (400m-5km)
- Urban Area

### **RECOMMENDATION**

GRANT a Certificate of Lawfulness for the proposal.

### **SITE DESCRIPTION**

The application property is a large three storey detached building situated within the urban area of Woking. It benefits from a rear garden and a large parking area to the front of the property.

### **PLANNING HISTORY**

DC/78/0155 CHANGE OF USE - RESIDENTIAL TO LANGUAGE SCHOOL Permitted

DC/79/0176 ERECTION SINGLE-STOREY EXTENSION TO EXISTING DWELLING Permitted

DC/82/1149 SINGLE-STOREY SIDE EXTENSION Permitted

DC/86/1056 EXTENSION TO PROVIDE 3 WC Permitted

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PLAN/1992/0173 Change of Use of premises from Language School to use by Geophysical & Hydrographic Consultants to the oil industry. (Change of use from Class D1 to B1). Refused

PLAN/2020/1204 Proposed use as a non-residential institution within Class D1 where the existing use is within class D1. Refused for the following reason: "*The submitted evidence is not sufficient for the Local Planning Authority to conclude that the proposed use of the Mascot Harven School of English as a day nursery is lawful and it is recommended that the Certificate of Lawfulness application is refused.*"

### **CONSULTATIONS**

WBC Legal Officer: "The Lawful Development Certificate (LDC) is to establish whether a change of use from a 'language school' to a 'day school' would constitute the use of the building within the same use class and would therefore be taken not to involve development of the land defined in the Use Class Order.

Planning considerations and policies are not relevant in this context as the purpose of the certificate is to establish whether the change of use from language school to a day school would constitute the use of the building for a purpose within the same use class and would therefore be taken not to involve development of the land as defined by the Use Class Order (as amended).

Section 3 of the UCO 1987 states that subject to provisions of this order where a building is used for a purpose of any class in the schedule, the use of that building for any other purpose of the same class shall not be taken to involve development of the land.

The Town & Country Planning (Use Classes) Amendment Order 2020 defines Class F1 (Learning and non-residential institutions) as being any use not including residential use— (a) for the provision of education.

Planning permission was granted on 25 April 1978 for the 'change of use of existing dwelling from residential to a tutorial establishment for the tuition of English language'. The lawful planning use of the building remains a language school and is considered to be use class D1 (non-residential institutions). There are no conditions attached to the planning permission restricting the use of the building to a specific purposes within Use Class D1.

The 1987 UCO was amended in 2020 and Reg 2 of the UCO 2020 revokes Parts A and D of the Schedule to the 1987 UCO. Regulation 13 amends the UCO and inserts a new Schedule 2 providing for new classes including Class E (commercial, Business and Service) and Class F.1 (Learning and non-residential institutions) Class F.1 and F.2 subsume some of the previous use classes which were specified in the Schedule to the Use Classes Order as Class D1 (Non-residential institutions) and Class D2 (Assembly and leisure).

The UCO 1987 defined use Class D1 (non-residential institution) as being as use not including a residential use (b) as a creche, day nursery or day centre (c) for the provision of education. As set out above the new UCO 2020 introduced a new class E and as a result the former D1 uses as a creche, day nursery now fall within new Use Class E. Such uses are specifically listed within that use class. They do not form part of the new use class F1.

The lawful planning use of the building is considered to fall within the new use Class F1 as a learning and non-residential institution.

It is not a permitted change of use from Class E to F1. It was therefore important for us to obtain more information relating to the use of the 'day school' including the ages of the

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children. Clearly, children using the building aged 0-3 would be considered a use more akin to a creche or nursery and such a use would fall within use class E rather than F1.

The proposed use of the building as a 'day school' for children aged 7-17 is considered to fall within use class F1 as it constitutes a use, not including residential for the provision of education. There are no planning conditions attached to the 1978 planning permission referred to above which restricts the use of the building. It is therefore considered that the proposed change of use from a 'tutorial establishment for the tuition of English language' to a 'day school' for children aged 7-17 would constitute the use of the building and land for a purpose within the same use class (F1) and is therefore not taken to involve development of the land as defined by the UCO 1987 (as amended)."

### **REPRESENTATIONS**

Twenty letters of objection have been received citing the following issues:

- Loss of amenity in terms of additional noise/disruption from traffic/use of school kitchen/waste management and children playing outdoors
- Insufficient parking
- Query re necessity of another school
- The 1978 permission was only for a language school (Officer note: there are no planning conditions restricting the use in the 1978 permission)
- The use is to be use as a nursery (Officer note: this has been confirmed by the applicant's agent as not to be the case, in any case use as a nursery falls within a different use category and would therefore constitute a material change of use, for which planning permission would be required)
- Traffic congestion and risk of accidents
- Use should be returned to residential
- Request for use of section 102 of TCPA 1990 (Officer note: this is necessary or relevant in this case)

However, the concerns raised cannot be taken into consideration as they are not relevant to the application which seeks to ascertain whether the proposed use requires planning permission.

### **RELEVANT CONSIDERATIONS**

#### **The Town and Country Planning Act 1990 (as amended):**

- Section 55 – Meaning of "development" and "new development"
- Section 192 – Certificate of lawfulness of proposed use or development

#### **The Town and Country Planning (Use Classes) Order 1987 (as amended)**

- Article 3 – Use Classes
- Schedule 2, Part A

### **PLANNING ISSUES:**

1. The proposal relates to a building which has been in use as a language school for English. The applicant seeks to demonstrate under this application that the use of the property as a day school would fall within Use Class F1 use and so would not constitute development and would not therefore require planning permission.

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2. On 1<sup>st</sup> September 2020 the Town and Country Planning (Use Classes Order) 1987 was amended; before this date the property in question would have comprised Use Class D1 falling under “schools, non-residential education and training centres”. However, since 1<sup>st</sup> September 2020, this class has been revoked and a new Use Class F1 has been introduced for “Learning and non-residential institutions” which includes ‘any use not including residential for *inter alia* for the provision of education’.
3. Section 55 of The Town and Country Planning Act 1990 (as amended) defines the meaning of ‘development’ and ‘new development’ and states:

*“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.”*
4. Section 55(2) of the Act lists operations or uses of land which do not constitute development. This includes:

*“...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.”*
5. The pertinent issue in this case is to establish the existing authorised use and whether the proposed use falls within the same use class. If this is the case, the proposed use would not constitute development and planning permission would not be required.
6. The property in question was originally permitted in 1978 for use a language school (see Planning History section). None of the permissions include conditions which restrict the use classes of the property. The authorised of the site, as established in previous applications, was previously Use Class D1 and now Use Class F1. The proposed use, being a use for the provision of education falling under ‘learning and non-residential institutions’ falls within Use Class F1. The applicant has confirmed the age of children attending would be 7-17 years. If the children that would attend would be pre-school, it could be argued the proposed use would be more akin to a day nursery or creche which would fall under use class E. However this is not the case, unlike the 2020 certificate application. The proposed school would operate as a normal day school having normal school opening times, operating Monday to Fridays and during term times.
7. As the lawful existing use and proposed use fall within the same use class (Use Class F1), as stated under Section 55 (2) of The Town and Country Planning Act 1990 (as amended) where use of land/buildings fall within the same use class, this does not constitute development and planning permission is not required.

### **CONCLUSION:**

8. The proposed use would fall within Use Class F1 of The Town and Country Planning (Use Classes) Order 1987 (as amended) and so the proposal would not constitute ‘development’ as defined by Section 55(2) of The Town and Country Planning Act 1990 (as amended). The certificate is therefore recommended to be granted as planning permission is not required.

### **RECOMMENDATION:**

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It is recommended that the Certificate be granted for the following reason:

01. The proposed use would fall within Use Class F1 of The Town and Country Planning (Use Classes) Order 1987 (as amended) and so the proposal would not constitute 'development' as defined by Section 55(2) of The Town and Country Planning Act 1990 (as amended). Planning permission is therefore not required.

### **INFORMATIVES:**

01. The plans and documents related to the Certificate recommended to be granted are listed below:

Site Location Plan received by the LPA on 09.12.2021

Planning Statement received by the LPA on 09.12.2021

02. The Council confirms that in assessing this planning application it has worked with the applicant in a positive and proactive way, in line with the requirements of the National Planning Policy Framework (2021).