



DECISION MADE BY THE DIRECTOR OF SUSTAINABLE COMMUNITIES

Application No	:	21/01429/CLEUD Certificate of Lawful Existing Use Dev
Location	:	Marconi Athletic And Social Club Tydemans Great Baddow Chelmsford Essex CM2 9FH
Proposal	:	The use of the Community Facility (Hamptons Sport and Leisure) to be used for a range of primary uses falling within use Classes E, F1 and F2 of the 1987 Use Classes Order (as amended). This includes (but not exclusively limited to): -The provision of indoor sport, recreation and fitness, -The provision of health and medical services to visiting members of the public, -A creche, day nursery or day centre to visiting members of the public, -For the provision of education, -For the display of works of art, -For public reading, -A public hall or exhibition hall, -For, or in connection with, public worship or religious instruction, -A hall or meeting place for the principal use of the local community, and, -An area or place for outdoor sport or recreation.
Applicant	:	Hampton Sport and Leisure Ltd Hampton Sport and Leisure Ltd
Agent	:	Mr Robert Harrison
Date Valid	:	14th July 2021
Development Type	:	CLEUD/CLOPUD (D26)
Drawing No(s)	:	;
Target Date	:	31st October 2021
Consult Expiry	:	13th September 2021

Description of the site

The Hamptons is a sport and leisure complex located in Tydemans, off Beehive Lane. It comprises a mixed-use community building which includes squash courts and changing facilities, a car park and adjacent outdoor tennis courts. The surrounding area is predominantly residential.

Details of the proposal

The application for a Certificate of Lawfulness of Existing Use or Development or CLEUD, seeks to establish a wider scope for worship and related religious activity based on:

- (i) submissions relating to the Use Classes Order (UCO) i.e., the existing use comprises a mixed E, F1 and F2 use* and,
- (ii) use for religious purposes has been taking place for more than 10 years and is therefore immune from enforcement action

** Class E. Commercial business and service – includes at (d) use for indoor sport, recreation, or fitness.*

Class F1. Learning and non-residential institutions – includes at (e) use as a public hall or exhibition hall and at (f) for or in connection with public worship or religious instruction.

Class F2. Local community – includes at (b) a hall or meeting place and at (f) for or in connection with public worship or religious instruction

Applicant's evidence

- Completed CLEUD application form
- Site location Plan
- Planning statement and appendices
- Statutory declaration from Ann Silk
- Statutory declaration from David Silk
- Statutory declaration from Mohammed Nawaz
- Statutory declaration from Peter Burton
- Statutory declaration Russel Kemp

Summary

The applicant is seeking a lawful development certificate to confirm the use of the building known as the Hamptons Sport and Leisure has a lawful use falling within Classes E, F1 and F2 of the 1987 Use Classes Order (as amended) and that the planning unit has included religious uses as part of the community uses for a period more than ten years.

The certificate is sought on the following two grounds as set out within the supporting statement.

1. The use as originally permitted comprised a mix of D1 and D2 uses. Following the 2020 amendments to the Use Classes order and the revocation of the D1 and D2 uses the mix of uses translated into mixed E, F1 and F2 uses. Therefore, the use of the site for religious worship did not comprise development.
2. The inclusion of religious worship as part of the community uses to which the building has been put, has been ongoing within the planning unit for a period in excess of 10 years and is now immune from enforcement action under the 10-year rule.

Before considering the two grounds for which the certificate is sought it is first relevant to assess the planning history of the site.

Site history

The Hamptons is a sports and leisure complex is located on land formerly occupied by the Marconi Athletic Social Club, although the main part of the former MASC club building was located on land which has now been residentially developed.

The current development was completed and came into operation in 2012 after planning permission was granted in 2006 (04/02419/FUL) for the *'Development of a community facility building, tennis court and associated car park.'* The application site for the community building was a very small area of the former Marconi site with the remainder of the former site being used as a housing development (04/02419/OUT). None of the original Marconi Social Club building was proposed to be retained as part of the full planning application.

In 2009 (08/01872/FUL) an amendment to planning permission 04/02149/FUL was granted to BAE Systems property and Environmental Services. The amendment made a number of changes to suit the club's current requirements. A further material amendment application (11/01812/MAT) was granted permission in 2012. This application added further external plant areas to the development.

A new planning application (11/01814/FUL) was also granted in 2012 for the variation of conditions 6 and 15 of permission 08/01872/FUL to amend the design and location of the refuse facility and car parking arrangements.

The effect of the planning permissions as listed above is that the building constructed in 2012, and currently on the site, has authorised use as a community facility and the adjoining land as an ancillary car park and tennis courts.

There were no planning conditions attached to any of the above permissions which constrained the scope of the community facility use.

The community facility provides a range of uses including leisure, recreation, sports activities, classes, and meetings. The ownership of the building changed in February 2017 and the building was renamed as Hamptons Sport and Leisure as it is known to this day. In recent years the management of the building has passed to the Chelmsford Muslim Society, who are the applicants. The building has continued to operate as previously, apart from a cessation of the bar, but with the addition of the use of parts of the building for Islamic worship and related activity.

A list of relevant applications is set out below:

04/02419/FUL- Approved 11/10/2006

Development of a community facility building, tennis court and associated car park (full), residential development (outline).

04/02419/OUT/FUL- Approved 10/5/2006

Residential development (outline), development of a community facility building, tennis court and associated car park (full)

08/01872/FUL- Approved 10/3/2009

Redevelopment of the existing MASC community building together with 6 no. tennis courts, car park and associated landscaping. Amendment to planning permission 04/02419/FUL.

11/01812/MAT- Approved 17/2/2012

Material amendment to permission reference 08/01872/FUL (redevelopment of the existing MASC community building together with 6 no. tennis courts, car park and associated landscaping) for the addition of external plant areas.

11/01814/FUL- Approved 17/2/2012

Variation of conditions 6 and 15 of planning permission 08/01872/FUL to amend the design/location of refuse facility and car parking arrangements.

Use classes order and use of the building (First ground for which a certificate is sought)

Section 55 (1) of the Town and Country Planning Act 1990 defines development to include *'the making of any material change in the use of any buildings or other land.'* Uses and changes of use are considered by reference to 'the planning unit'- the area of land which contains the use. The Council consider the planning unit to consist of the building, car park and tennis courts.

The use of the community facility consists of a range of activities which do not have a primary/ ancillary relationship. This has included sport, recreation, meetings and religious uses by a wide range of groups. There is a clear mixed use of the whole planning unit.

Section 55 (2) of the Town and Country Planning Act (1990) states that *'the following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land-*

(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, any part of the buildings or the other land for any other purpose of the same class.'

The order mentioned in s. 55(2)(f) is The Use Classes Order 1987 (as amended). This order has most recently been amended by the Use Classes (Amendment)(England) Regulations 2020. Article 3(1A) of the order follows s.55 (2)(f) and states:

'(1A) Subject to the provisions of this Order, where a building or other land is situated in England and is used for a purpose of any class specified in-

- (a) Part B or C of schedule 1, or*
- (b) Schedule 2,*

The use of the building or that other land, or if specified, the use of part of that building or the other land (part use), for any other purpose of the same class is not taken to involve development of land.'

It is clear from the language of s.55(2)(f) and Article 3(1A) that the Use Classes order does not apply to all uses and changes of use. It is also noted that the singular references are 'to a purpose of any class specified' and 'any other purpose of the same class. The Use Classes order is further examined by Martin Goodall in his book *'The use of land and Buildings.'* At 8.2 of this book, he states.

The use of a planning unit for a mixed use falling within more than one of the classes in the Use Classes Order is a sui generis use (i.e., in a class of its own) notwithstanding that each of the elements of that use is in itself a use that would come within the UCO. It is quite common for such a mixed use to be described for convenience (in terms of the classes) however the fact remains that the mixed use falls wholly within the scope of the UCO and thus constitutes a sui generis use.'

The position set out by Martin Goodall has been reaffirmed by the courts in the Belmont Riding centre v FSS (2003) judgement and the Court of Appeal judgement in *Cocktails Ltd V Secretary of State for Communities and Local Government (2008)*

The planning history of the application site shows that planning permission has been granted for a community facility building with tennis court and associated car park. The approved community use is a not a use included in the Schedules of the Use Classes order, as amended nor was it included prior to 1st September 2020. The use as approved is therefore self-evidently mixed; sports, fitness, recreation, classes, meetings, functions and suchlike. Given that the mix of uses could fall within a variety of classes the building as approved was clearly sui generis.

The existing level of religious worship within the building is low level and the activities only take place within a couple of rooms within the building at select times in the week. The level of religious activity as it currently occurs has not changed the mixed character of the community facility and fits within the presently permitted sports, recreational and social uses. It is the Council's view that no material change of use has occurred within the building and that it still has a mixed providing a variety of different 'community' events. In its current form the use of the building is still mixed with no prominent use which dominates all the others. In terms of the use classes order it is still therefore considered sui generis.

With regard to the first ground for which a certificate is sought, namely that the building has a mix of Use Classes E, F1 and F2, the applicant has misunderstood planning law. The planning unit is outside the terms of the Uses Classes Order, and it follows from the terms of s.55(2)(f), Article 3(1A) and the approach of the Courts that a certificate cannot be granted for the mixed-use terms applied for.

The evidence of ten years of continuous religious use (Second ground for which a certificate is sought)

The Planning Unit

The Council is of the view that that the original Marconi Social Club building, its curtilage and the extensive outdoor recreational/sporting areas formed a single planning unit. It was one area of occupation containing a mix of related activities- not with a single main use or primary/ancillary relationships.

The construction of the new Hamptons building and the laying of the new car park and tennis courts which were brought into use in 2012 resulted in the creation of a new mixed use planning unit. The unit of occupation was much reduced from the previous unit with no part of the pre 2012 fabric retained. A 'new chapter' in the planning history commenced. It is the Council's view that the historic mixed used of the Marconi Social Club (pre-2012) cannot be carried forward into the new planning unit, which was authorised by the planning permission of 2006, as amended in 2009 and 2012.

This position is supported by the *Newbury District Council v secretary of State for the Environment* (1981) court case. In this case it was found that existing use rights can be lost by reason of a new development sanctioned by a planning permission. The existing use right disappears because the character of the planning unit has been altered by the physical fact of the new development.

In this case it appears to the Council that the planning unit is the area of Hamptons occupancy (the building, car park and tennis courts).

Evidence of continuous religious use

For a change of use to be immune from enforcement action it must have been in operation for a period of ten years or more.

Several statutory declarations have been submitted with this application. The declarations show that a different number of religious organisations including the United Methodist Church, Chelmsford Indian

Association, European Buddhist Hanmi Association and Chelmsford Muslim Society have used the site for religious events dating back to as early as 2007.

The statutory declarations argue that the existing building and its predecessor have been used for religious purposes for ten years. They argue that this use has been continuous as the new building was brought into operation before the previous Marconi building was demolished.

However, as mentioned above the Council considers that the existing Hamptons site is a new planning unit which began in 2012. The use of the building by any religious organisation has therefore only occurred for a period of nine years and is not exempt from enforcement action.

The evidence submitted within the statutory declaration is also limited and relates to specific dates and bookings. It does not show that any religious group has used the building as part of the community uses for a continuous period of ten years or more.

Even if the Council's view regarding the ten-year use and the new planning unit is incorrect it is considered that any minor religious use, such as that currently in operation within the building, would fall within the scope of the mixed community uses of the building and would not amount to a material change of use of the building.

Given, the evidence submitted it is considered, on the balance of probabilities, that the building has not been used for religious purposes as part of the mixed community uses for a period in excess of ten years.

A lawful development certificate cannot therefore be issued for the second ground which is being applied for.

RECOMMENDATION

A Certificate of Lawfulness be REFUSED for the following reasons:-

Reason 1

In the opinion of the City Council the lawful planning use of The Hamptons is a sui generis mixed community use. Planning permission was granted to this effect in 2006 with amendments in 2009 and 2012. The Use Classes Order 1987 (as amended) has no application to such a mixed use. The Council cannot therefore issue a certificate for the mix of use class terms sought.

Reason 2

The construction of the Hamptons, completed in 2012, in accordance with planning permission, resulted in the construction of a new planning unit. A new chapter in the planning history opened at this time. The use of the former Marconi Social Club building prior to 2012 cannot be relied upon to establish a continuous 10 years of religious use as required by s.171B (3) and s.191 (2) of the Town and Country Planning Act 1990 (as amended)

Reason 3

Irrespective of whether the Council is correct in its assertion that a new planning was created in 2012 it is not satisfied on the submitted evidence that the use of the Marconi and/or of the Hamptons for the purposes of religious worship/ instruction was at a level which exceeded that permitted as 'community use' or that the claimed use was continuous for a ten-year period.

Background Papers

Case File
