

Legal Opinion

1. INTRODUCTION

1.1 We are asked to advise Arqiva Services Ltd. on:

- 1.1.1 how modern data centres are most appropriately to be classified in terms of the Use Classes Order 1987 (as amended); and
- 1.1.2 whether there would, prima facie, be a change of use in planning law terms if all or part of an Arqiva site currently utilised for telecommunications/ transmitting/ broadcasting operations was to be used for data centre operations.

1.2 Whether planning permission would be required for any further building or engineering operations at such a site – as opposed to a change of use – would be a separate issue to be examined on a case by case basis.

2. NATURE OF ARQIVA SITES

2.1 We are instructed that Arqiva Services Ltd. owns and operates the radio and television terrestrial broadcast networks across the UK.

2.2 The main sites will usually entail one or more large radio masts that can range between 45 and 300 metres in height, radio equipment buildings that can range between 500 sq m and 3,000 sq m, together with standby generators and associated fuel stores and external heat exchangers to keep the electronic equipment cool.

2.3 Such installations usually sit within fenced compounds, and sites in rural areas are often situated within a wider land ownership that goes beyond the fenced compound.

2.4 Sites are usually permanently or partially manned, with some being used as team bases for field operatives responsible for maintaining and servicing other smaller outlying sites. All sites therefore have parking and circulation areas with controlled access and other ancillary accommodation such as offices and welfare facilities. In addition, to varying degrees, the sites will be used for ancillary storage, repair and testing of apparatus, with associated storage and workshop facilities.

2.5 A key characteristic of all these sites is that they form part of a live electronic communications network and continuously receive, process and transmit electronic communications, the means of conveyance being both cable and wireless connectivity. The availability to the networks is tiered with sites allocated according to their importance within the network. The standard level is 99.95% availability, so almost constantly "live".

2.6 To achieve this, key features of a current radio or television installation include:

- 2.6.1 within the radio equipment buildings, electronic communications apparatus that is set out in multiple racks or in free standing units. This is installed in temperature controlled rooms with associated internal and external cooling apparatus;

- 2.6.2 for resilience, the apparatus is often installed in pairs with continuous on and off site monitoring;
 - 2.6.3 to ensure near continuous availability to the networks the sites will have dual and high powered electricity supplies, as well as standby generators, fuel stores and sometimes battery back up systems;
 - 2.6.4 the sites will be fitted with fire suppression systems and have a high level of security, with fencing and controlled access; and CCTV and other measures to afford appropriate site protection;
 - 2.6.5 the sites will all have high connectivity via cable and often earth and satellite dish links;
 - 2.6.6 the masts or towers will be fed signals from the radio equipment via feeder cable for transmission through antenna systems;
 - 2.6.7 to enable simultaneous broadcasting of a variety of services and programmes using the same antenna, the signals are all processed in a combiner before being sent up the mast for transmission; and
 - 2.6.8 some electronic data will be stored on sites in various formats for emergency or standby broadcasting.
- 2.7 The earliest radio sites were developed in the 1930's and the television sites in the 1950's. Originally the radio equipment buildings contained large quantities of apparatus reflecting the nascent technology. Some sites contained studios to provide programme links and some live programming. With much improved modern technology and automation, the amount of apparatus necessary has reduced and there is no longer any need to have on-site studio facilities.
- 2.8 A number of Arqiva sites are already used by other electronic communications operators, with no change of use being required for use by such operators.
- 2.9 With digital switchover to the television network and digital audio broadcasting, the modernisation of sites is now taking place. Hence there is space on a number of sites available for other electronic communications purposes.

3. NATURE OF MODERN DATA CENTRE OPERATIONS

- 3.1 A modern data centre is a facility designed to house computer systems and electronic communications equipment. They are a key component of modern Information, Technology and Communications (ITC) systems which comprise information bases, networks and interfaces. They provide a location for the accommodation of active electronic information technology hardware and software and perform the functions of receiving, storing, backup, processing and communicating electronic data and voice information.
- 3.2 Modern data centres have evolved from being early generation computer rooms to provide an expanding range of functions as electronic information technology and communication systems continually develop.
- 3.3 Standard documents from accredited professional groups such as the Telecommunications Industry Association (TIA) set out requirements for modern data centre design. These illustrate the various elements comprising the "use" of a data centre including the storage, processing and communication of data. For example, the TIA-942: Data Centre Standards Overview, which is recognised by UK data centre providers and occupiers, describes different levels of requirement from Tier 1 to Tier 4, with Tier 1 being the simplest form of data centre and Tier 4 being the most stringent.

- 3.4 Modern data centre operators may offer a range of services including co-location (where several types of equipment may be located at the same facility), managed servers networks and data recovery backup solutions.
- 3.5 Modern data centres in the UK are part of a broad electronic communications network. For example, modern data centres are part of the infrastructure of stock-taking, the UK's fixed line and mobile telephone systems, broadcasting, social networking sites such as Facebook and operation of the trading systems of financial services companies.
- 3.6 3G telecommunications operators also typically provide their 3G telecommunications services through a network of modern data centres to which data is sent, stored, processed and retrieved – in that case, data communication occurs via operator handsets, routing calls and data exchange from one individual to another.
- 3.7 Businesses also often utilise a modern data centre to route telephone calls from staff member to staff member and to allow staff to communicate with the company's central information base – in that case, archived emails and files are stored in a virtual library until such time as they are required and retrieved.
- 3.8 Modern data centres vary in their type and features, dependent on the user or users of the facility. The key characteristics and features of modern data centres include the following:
- 3.8.1 Modern data centres are continuously live, receiving, storing, processing and transmitting electronic data. They are dependent on electronic communications capability and connectivity and may be served by multiple telecommunications providers. Connectivity is therefore essential and they contain routers, core switches and systems which process and communicate data to the outside world and form part of electronic communications networks. Reflecting this key requirement, the main differential between the four tiers of data centres highlighted within TIA – 942 is availability to network, which ranges from 99.671% at Tier 1 to 99.995% at Tier 4. This is clearly a very high degree of "liveness".
 - 3.8.2 They provide functional and flexible accommodation for information technology equipment. Provision is often made for ITC space in data halls, which include free standing and/or rack mounted systems to hold computers and hardware in secure and clean conditions. These may be modular allowing expansion space. Servers may be lined in single rows with access corridors between each bank of equipment. Associated facilities are generally provided for employees and customers, together with areas of support equipment and plant including, electrical power, switch-rooms, air-handling and mechanical plant rooms.
 - 3.8.3 They require suitable levels of resilient and continuous power supply to run the information technology equipment, plant and other equipment required to maintain the necessary operating environment. Backup power supplies, may comprise one or more supply system with generators and sub-stations required to support the facilities.
 - 3.8.4 They may provide continuous environmental monitoring and resilient cooling systems for temperature controlled rooms to house the information technology equipment.
 - 3.8.5 They are generally located having regard to commercial, operational and technical requirements. They are generally located in safe and secure sites, away from flood risk areas and hazardous uses for example, and may be situated near other information technology communication hubs to share common services and maximise efficiency.

3.8.6 High levels of security are generally required and features may include manned security arrangements and requirements for security clearance, gated sites and access control systems, internal and external CCTV systems and fire protection systems.

3.9 The defining characteristic of a modern data centre is thus materially different from older data processing centres which primarily processed data, as opposed to having a range of functions.

3.10 A modern data centre will also not usually just primarily store data (or at least be limited to just primarily storing data), as is evident from the key characteristics of a modern data centre set out above. The defining characteristic of a modern data centre is rather the part it plays in allowing the swift access and retrieval of data (i.e. the rapid communication of data), with its key characteristic being the data centre's "live" ability to do this, i.e. the "continual liveness" of its function. This is elaborated upon further below.

4. MODERN DATA CENTRES AND USE CLASS

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

4.2 The Town and Country Planning (Use Classes) Order 1987 (as amended) ("the Use Classes Order") categorises different uses of land.

4.3 The Use Classes Order plays two important roles: first, it provides that in cases where the change of use is within a use class, this does not constitute a material change of use requiring planning permission (section 55(2)(f) of the 1990 Act); secondly, it provides a common language for the description of certain particular uses of land to help define where there is no material change of use.

4.4 If not falling within permitted changes within the Use Classes Order, the test for whether planning permission is required for a change of use is whether there has been a material change of use of the land for the purposes of section 55(1) of the Town and Country Planning Act 1990.

4.5 The Land Use Gazetteer does not deal with the use classification of a "data centre".

4.6 "Data processing centres" are listed in the Land Use Gazetteer as a B1 use, but they are not the same as modern data centres. As is explained further below, in modern data centres, the "processing" of data is only one of several functions being performed within the facility. The primary function of old-style "data processing centres" was to "process" raw data into data sets. However, the functions of modern data centres are different, being a shifting combination of "storing", "processing" and "electronically communicating" data, depending on the needs of a variety of customers. The defining characteristic of a modern data centre is, in fact, the part it plays in allowing the swift access and retrieval of data (i.e. the rapid communication of data), with its key characteristic being the data centre's "live" ability to do this, i.e. the "continual liveness" of its function.

4.7 In addition, it is questionable in any event whether the "processing" of data within a "data processing centre" does properly fall within the actual B1 use class description (see further below).

4.8 "Data centres" have been variously accepted as either a B1, B8 or sui generis use in a number of different decisions by various local planning authorities. The variation in approach appears, in general terms, a consequence of:

4.8.1 in some instances a recognition by a local planning authority that a modern data centre does actually perform a mix of functions in terms of

communication, storage and processing of data which does not therefore ordinarily comfortably fit within a B1 or B8 use class and ought to be regarded as a "sui generis" use;

- 4.8.2 in some instances either a lack of detailed analysis of the issue by a local planning authority, or a lack of detailed understanding of what variety of functions a modern data centre usually performs; and
- 4.8.3 in some instances reliance on a statement by the data centre promoter that the specific data centre proposal in question is for a data centre which does have a specific "primary function", e.g.
- (a) primarily or exclusively data storage (in which case a B8 use has sometimes been considered appropriate); or
 - (b) primarily or exclusively "data processing" (in which case a B1 use has sometimes been considered appropriate).

Sometimes this may also be influenced by details of an intended specific operator or customer.

We deal with these points further below.

- 4.9 In relation to assessing whether a modern data centre is most appropriately a "sui generis use", the concept of "sui generis" use was explained in *Tessier v Secretary of State for the Environment* [1975] 31 P & CR 161. Lord Widgery CJ stated that it was not desirable that the use classes should be stretched to embrace activities which did not clearly fall within them. The facts of that case provide an example: a building had been used as a sculptor's workshop, the sculptor having operated industrial machinery and tools for cutting out large stone masonry blocks and other sculpting activities. The court held that this was not an industrial use because the primary activity of the sculptor was the artistic work of a sculptor and not the making or manufacture of an article in the course of a business. The approach adopted in the *Tessier* case is often contrasted with that taken subsequently in *Forkhurst Ltd v The Secretary of State for the Environment* (1982) JPL 448. In our view, however, the difference is not one of substance. Hodgson J expressed dissent from Lord Widgery's approach in *Tessier*, stating that there was "no warrant in the Act for either stretching or restricting the Use Classes Order, nor could it be said to be either a good thing or a bad thing to treat unusual activities as sui generis". However, as the editors of the Encyclopaedia of Planning Law have noted, "the dissent is perhaps overstated. Lord Widgery's observations [in *Tessier*] amounted to no more than a caveat against attempting to stretch the classes so as to encompass uses which were in fact sui generis; and thus were entirely in line with Hodgson J's assertion that there was no warrant for stretching the language of the Order".
- 4.10 Paragraph 27 of Circular 03/2005 also refers to sui generis uses and explains that the list of these in Article 3(6) of the Uses Classes Order is not exhaustive: "many uses do not clearly fall within any use class and new types of use are constantly emerging. The Courts have held that it is not necessary to go to extreme lengths to identify a class for every use".
- 4.11 In relation to Arqiva sites, these are generally regarded as a "sui generis" use. A "telecommunications transmitting station" and a "telecommunications exchange" are both classified as a "sui generis" use in the Land Use Gazetteer.
- 4.12 **Modern Data Centres – A Sui Generis "Electronic Communications Network" Use rather than a B1 Use or (unless there are specific circumstances) a B8 Use**
- 4.13 **Background**

As set out above, data centres have been variously regarded in a number of decisions by local planning authorities as either a *sui generis*, B1 or B8 use.

However, it is clear from the technical capabilities and functions of a modern data centre that a modern data centre in fact comprises a varying mixture of "storage", "processing" and "communication" of data, with the defining characteristic being the "continual liveness" of its function.

In such circumstances, a "sui generis electronic communications network" use is the appropriate use classification, as explained further below.

Indeed, in relation to "mixed uses", Circular 03/2005 highlights at paragraphs 13 and 14 that:

"13. Where the primary use of land or premises is a mixture of different uses, such mixed use does not fall into any of the classes set out in the amended Order. The use will therefore be *sui generis*.

14. Planning Permission is not always required for the change of use from one mixed use to another. The question is whether or not the change of use is material, in planning terms. Where the change of use does not amount to a material change, there will be no development, and no need to obtain planning permission."

It is notable that the 2005 updating of the Use Classes Order did not result in the inclusion of data centres within any of the defined use classes (including B1 or B8). This is despite the update making it clear that some new land uses which had come forward as a result of technological or market changes (such as internet cafes) would fall within a defined use class. This supports a data centre being most appropriately regarded as a *sui generis* use.

4.14 **Why a Modern Data Centre would not ordinarily be primarily a B1 Use**

In terms of a B1 use (which some local planning authorities have in particular circumstances considered an appropriate use class for a data centre), the Use Classes Order defines a B1 use as comprising a use for all or any of the following purposes:

- as an office other than a use within class A2 (financial and professional services) (a B1(a) use);
- for research and development of products or processes (a B1(b) use), or
- for any industrial process (a B1(c) use),

being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

In terms of a B1(a) use, the primary function of a modern data centre cannot reasonably be regarded as an office.

In terms of a B1(b) use, the primary function of a modern data centre would not involve the "research and development" of products or processes, unless there is clear evidence that it would be data centre with specific research and development processing as a primary function which would not be typical.

In terms of a B1(c) use, it is hard to conclude that a modern data centre performs an "industrial process" within the meaning of Article 2 of the Use Classes Order. Article 2

states that an "industrial process" means a process for or incidental to any of the following purposes:

- the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording);
- the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or
- the getting, dressing or treatment of minerals in the course of any trade or business other than agriculture, and other than a use carried out in or adjacent to a mine or quarry.

A modern data centre does not readily fall into any of these "industrial process" categories as:

- the primary function of a modern data centre is not to make any article (in the manufacturing sense);
- the elements of "processing" and "storage" of electronic data do not sit comfortably with "altering" or "maintaining" an "article" where:
 - (a) "maintaining" must be different to "storage" (as storage is covered by a B8 use);
 - (b) to the extent data is processed in a modern data centre (which is often not a primary function of a modern data centre in any event), this rarely involves actual "alteration" of data;
 - (c) seeking to define "electronic data" as an "article" in the industrial process sense would be likely to be regarded as a "strained and unnatural construction of the word article" (see Finlay v Miller Construction (1977) SLT 8); and
 - (d) the "electronic communication" of data (which is in reality the defining characteristic of a modern data centre) is not included.

Further, it is noted that paragraph 53 of Circular 03/2005 (which highlights particular types of B1 use) does not include data centres, and paragraph 53 confirms that for any "hi-tech" use to fall within the B1 use class, it will need to fall within one of the B1(a), (b) or (c) uses.

4.15 Why a modern data centre would not ordinarily be primarily a B8 Use

In terms of a B8 use, we are aware of a recent decision by a Planning Inspector in relation to an application for a certificate of lawful proposed development (CLOPUD) for a data centre at Magna Park, Milton Keynes¹. The Inspector concluded that the electronic storage of data could fall within a B8 use. However, it does not automatically follow (as that Inspector may possibly have considered it did in that instance) that a data centre ordinarily fits comfortably into a B8 use.

The decision did not deal with the point that the "storage" of data is only one part of the use of a modern data centre, and in particular it did not deal with the "processing" and "communication" of data elements which make up the overall "electronic communications use" of a modern data centre.

In addition, any storage of data is, in effect, often on a "rolling electronic storage" basis, being continually or frequently updated, so that it is not "static storage" in the

¹ Appeal decision APP/Y0435/X/09/2103771, 25 August 2009

traditional sense. Whilst there are some "just in time" B8 storage and distribution centres now in operation, these still involve physical goods which physically enter and exit the storage and distribution centre, with associated transport and delivery impacts, and there is no element of "processing" of the goods involved or remote accessing of the goods without a physical land use implication occurring on the ground. This is not the case with data centres.

Furthermore, a modern data centre is generally not used primarily for the storage of data. Whilst it is conceivable that there may be a specific customer or operator who will always limit the use of a data centre's functions to only primarily storing data, this is unlikely to usually be the case as a modern data centre is specifically designed to be continuously live in order to receive and transmit (i.e. communicate) electronic data, rather than simply store electronic data. In practice, the extent to which data is stored, processed and communicated varies according to customer needs which are usually a shifting combination of "storing", "processing" and "electronically communicating" data. This shifting combination depends on the needs of a variety of customers and may fluctuate on a day to day basis and over time as customers change.

Upon proper analysis, the essence or defining characteristic of a modern data centre is not therefore the storage (nor indeed processing) of data, but in fact, the part a modern data centre plays in allowing the swift access and retrieval of data (i.e. the rapid "communication" of data). The defining characteristic is the ability of a data centre to access, retrieve and communicate data "live", i.e. the "continual liveness" of its function.

When assessing whether a modern data centre would comfortably fit within a B8 use class, it should also be borne in mind what the general land use implications would be of classifying a data centre as a B8 use, namely that the premises could be utilised as a "storage and distribution" centre without the need for planning permission for a material change of use. Given the amenity impact issues which are often associated with "storage and distribution centres" in terms of, for example, traffic impact, hours of deliveries etc., this might well be an undesirable state of affairs for a local planning authority concerned with properly safeguarding against amenity impact. Whilst data centres themselves do not generate large amount of traffic or delivery movements, a "storage and distribution centre" would reasonably be expected to be different.

4.16 Why modern data centres are most appropriately part of a "Sui Generis Electronic Communications Network Use"

In our view, it is clear that modern data centres do not ordinarily sit comfortably within a B1 or B8 use as a primary function.

The most appropriate way to assess a modern data centre in use class terms is rather as part of a broader "electronic communications network sui generis" use that includes the various elements of "storage", "processing" and "communication" of data.

This is reinforced by:

- The broad definition to be given to "telecommunications" uses as stressed in the second endnote of PPG8 (Telecommunications) which states that:

"References to telecommunications throughout should be read as including all forms of communications by electrical or optical wire and cable and radio signals (whether terrestrial or from satellite), both public and private, except where otherwise stated."

Data centre communication of data clearly falls within this PPG8 definition.

- In addition, paragraph 30 of the supporting guidance to PPG8 makes specific reference to other networks used for data:

"30. In addition to those mentioned above there are national public networks for data and paging, national networks for maritime, aeronautical, defence, police and a number of other official services. There are also public interest national networks for rail, road breakdown, utility support, and regional networks for local health authorities, local government and many private networks (e.g. for road haulage, retail, security, taxis and couriers, agriculture and so on). These services use a variety of both analogue and digital services. Frequency bands range widely, with mobile services needing lower frequencies and fixed services needing higher bands."

It is clear that the Government recognises that the modern electronic communications network is broad and includes a variety of electronic communications.

- Indeed, the breadth of the electronic communications network use was confirmed by the enactment of the Communications Act 2003. This drew together the broadcasting and telecommunications forms of electronic communication into a single broad definition of an "electronic communications network" in section 32 Communications Act 2003 which includes:

"(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals—

(i) apparatus comprised in the system;

(ii) apparatus used for the switching or routing of the signals; and

(iii) software and stored data."

That definition clearly includes modern data centres which include "transmission" and "use of" data, along with the use of "software and stored data" and use of associated "apparatus".

- The umbrella nature of electronic communications network uses has been further emphasised by the incorporation in town and country planning legislation of the electronic communications code which is regulated by the Communications Act 2003 and daughter regulations.

For example, the permitted development rights previously enjoyed by telecommunications operators were expressly widened to include all "electronic communications" code operators under part 24 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended. This includes Arqiva as an electronic communications code operator and reinforces the acceptance in town and country planning legislation that "electronic communications network" uses should be dealt with under a broad umbrella. This reflects the modern reality of electronic communications networks, with a wide definition as set out in section 32 of the Communications Act 2003 above.

As well as Arqiva, electronic communications operators who benefit from the electronic communications code include, for example, Internet service providers who make significant use of data centres.

- It also noted that "data" is defined widely in legislation (such as the Data Protection Act 1998) to include both electronic and transmitted data. For example,

the "processing" of data also expressly includes the "transmission" of data pursuant to s.1 Data Protection Act 1998, reinforcing the broad approach to be taken.

5. MODERN DATA CENTRE USE BEING THE SAME USE CLASS AS TELECOMMUNICATIONS/ TRANSMITTING/ BROADCASTING USE

5.1 As set out above, modern data centres should most appropriately be regarded as part of a broad "electronic communications network" sui generis use.

5.2 Such an "electronic communications network" sui generis use also clearly includes use of a site for telecommunications / transmitting / broadcasting use. A "telecommunications transmitting station" is also clearly a "sui generis" use in the Land Use Gazetteer.

5.3 It is clear from the summary of the nature of the Arqiva telecommunications/ transmitting/ broadcasting sites in section 2 of this opinion, and the corresponding nature of modern data centres in section 3 of this opinion that, like modern data centres, a telecommunications/transmitting/broadcasting use:

5.3.1 also clearly falls within the PPG8 definition of "telecommunications", as well as the definition of an "electronic communications network" in s.32 of the Communications Act 2003;

5.3.2 clearly involves constant "live" communication of electronic data/signal by both cable and wireless connection. As set out above, the essence, or defining characteristic, of a modern data centre is the part it plays in allowing the swift access and retrieval of data (i.e. the rapid "communication" of data) in a "continual live" state. The same is the case with the telecommunications / transmitting / broadcasting use of Arqiva sites;

5.3.3 clearly involves an element of electronic processing and electronic storage of data/signals, as well as physical storage of components for the relevant on site telecommunications/ transmitting/ broadcasting use (in use class terms, there being no distinction to be made between electronic data storage and physical storage of equipment in any event);

5.3.4 often involves some ancillary office and/or welfare accommodation; and

5.3.5 often has many of the same characteristics in terms of site operation – for example:

Element of Site Operation/Characteristic	Arqiva Site telecommunications/ transmitting/ broadcasting use	Modern Data Centre use
An "Electronic communications network" mixed sui generis use is its primary function (vis a vis PPG8 and Communications Act definitions and in land use terms in accordance with paragraph 13 of Circular 03/2005)	√	√
"Live" communication of electronic data with stringent network availability requirements	√	√

Electronic storage of data	√	√
Electronic processing of data	√	√
Electronic equipment being set out in racks or free-standing units and rooms being temperature controlled with associated internal and external cooling apparatus	√	√
A significant power supply for the site - to ensure near continuous availability the sites will have dual and high powered electricity supplies, as well as standby generators, fuel stores and sometimes battery back up systems	√	√
A high degree of security for the site, with controlled access	√	√
Generally located in safe and secure sites away from flood risk areas or hazardous neighbouring uses	√	√
Parking and circulation areas	√	√
Permanent or partial manning of the site (sometimes with some maintenance and servicing personnel)	√	√
For resilience, the apparatus is usually installed in pairs with continuous on and off site monitoring	√	√
The sites will be fitted with fire suppression and security systems	√	√
Low number of site transport movements	√	√
Low number of deliveries	√	√

6. CONCLUSIONS

- 6.1 In light of the above, it can be concluded that, in the case of modern data centres, there should, prima facie, be no change of use in planning law terms if all or part of a site currently utilised for telecommunications/ transmitting/ broadcasting operations was to be used for data centre operations. In effect, such uses fall within the "electronic communications network" use umbrella.
- 6.2 It does not follow, of course, that planning permission would not be required for any physical building or engineering operations for this extension of "electronic communications network" operations. Such planning permission may well be required if existing buildings may need adapting or new buildings constructed. However, there

would, prima facie, be no change of use involved which would be a material consideration in the determination of any required planning application.

- 6.3 This advice is given in general terms, and is not particular to any specific site (though should apply generically). A Certificate of Proposed Use and Development (CLOPUD) would be one appropriate mechanism to clarify the position for any particular site if further clarity is required. Alternatively, the matter can be dealt with simply as part of the consideration of the use class issue during the planning application process.

Martin Kingston Q.C

No. 5 Chambers

6 September 2010

Richard Ford, Partner

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