

**WELWYN HATFIELD COUNCIL – DEVELOPMENT CONTROL**  
**DELEGATED REPORT**

<b>APPLICATION No:</b>	<b><u>S6/2007/1950/LU</u></b>
------------------------	-------------------------------

**DESCRIPTION OF SITE:**

The Oshwal Centre is based at the former Hook House (a Grade 2 Listed Building), which is set back some 200 metres from the north side of Coopers Lane Road and served by a private drive which leaves the road about 100 metres east of the residential road Firs Wood Close. Between the road and the house is an extensive parking area and adjoining the house is an Assembly Hall building constructed in the latter part of the 1980's.

The application refers to one area of the wider Temple site which has been granted consent as a parking area. The application area is currently hard surfaced with tarmac with concrete curbs. This surface is looking in poor condition and the curb stones in places are missing or dislodged. The landscaping areas although intact are not in particularly good condition.

**DESCRIPTION OF PROPOSAL:**

This application seeks a certificate of lawfulness for the proposed resurfacing and reconfiguration of existing car parking layout and new soft landscaping.

**PLANNING HISTORY:**

The site has an extensive planning history since 1980 when planning permission was originally granted for a temple at the site. In 1985 a further permission was granted for the Temple in a revised however work did not commence during the life time of the 1985 permission and accordingly renewals of the permission were sought and obtained in 1988, 1992 and 1995. During 1998 the applicants proposed certain alterations to the design and external appearance of the Temple and submitted a further application (Ref S6/1998/0062/FP) which was approved and this was revised again in 2003 with planning approval given by application S6/2003/1587/FP. Although the planning history is complex, it is the last application which is relevant for this application

S6/1998/0062/FP – Erection of Temple (Revision to planning permission

S6/0226/95/FP to incorporate 11.5 sqm of additional floor area and revised elevations) – granted 10/12/99.

S6/2003/1587/FP – Erection of Temple (Revision to previous planning permission S6/1998/662/FP) together with ancillary building and new car parking- granted 9/2/04

## **SUMMARY OF DEVELOPMENT PLAN POLICIES:**

Not applicable

## **CONSULTATIONS/ REPRESENTATIONS**

N/A

## **TOWN /PARISH COUNCIL COMMENTS**

None

## **DISCUSSION:**

### **The main issues are**

- 1) Whether the proposal can be defined as 'development' in s55 and in s336(1) of the 1990 Act. Section 55 (1) of the 1990 Act. Section 55 (1) contains the central core of the definition and provides that development may take one of two forms, namely,

'the carrying out of building, engineering, mining or other operation in, on, over or under land'

Or

'the making of any material change in the use of any buildings or other land'

- 2) Whether there are any planning permissions where planning conditions exist which impose restrictions on changes to the existing parking layout.

Turning to the issue of whether the proposal constitutes 'development', the proposal does not involve any construction of buildings, only the taking up of the existing tarmac and curb stones and relaying the car park surface, albeit over some areas which were landscaped 'islands' and in other locations some of the previously hard surfaced areas will be come soft landscaped areas. Importantly, these works are confined to an area which according to the approved Site Location Plan for application S6/662/98 is identified as car parking (see copy of drawing in file).

A more detailed drawing exists for the later 2003 application (S6/2003/1587/FP) which shows the current detailed layout in the same location as the 1998 permission. It would therefore be reasonable to conclude that the intention was for this subject area to function as a car parking area albeit with some intermittent landscaping.

The relevant test is to identify if the works are would be building, engineering, mining or other operations in, on, over or under land.

Although no definition is given in the Act of what 'engineering' operations are, court judgments have taken it to mean its ordinary meaning in the English language that:

'Operations of the kind usually undertaken by engineers'

These would normally be civil engineers, but could be traffic engineers or other specialist engineers. The proposed works are considered not to require such specialist skills and so they are not engineering operations.

No buildings are proposed or minor operations, and so this leaves the question of 'other operations'.

In regards to 'other operation', the Courts have placed some restriction on this where it relates to an activity similar to 'building operations' or to 'engineering operations' or to 'mining operations'. This allows a wider interpretation of these forms of development. Building can therefore be given a wider meaning than is normally given in its everyday parlance.

The courts have given further clarification where it is considered: 'the Act is referring to any structure or erection which can be said to form part of the reality, and to change the physical character of the land'.

The area in question is primarily a car park for 235 spaces and there are small areas of soft landscaping. The proposal is still for a car park with soft landscaping areas. The main issue is, therefore, whether the resultant changes would alter the physical character of the land. Although there would be some changes to the appearance of this area of the wider site, they would be only very minimal and not to an extent which would alter the physical character of the land.

To summarise, the works proposed would not for the purposes of the 1990 Act constitute development as they would not sufficiently alter the character of the land.

In respect to the second issue of planning conditions, it is necessary to check whether

The relevant applications are the 1998 permission and 2003 revision. There are no planning conditions related to this parking area on the site requiring the retention of the existing layout.

To conclude, the proposal neither constitutes 'development' as defined by the 1990 Act or would be contrary to the requirements of any planning conditions imposed by relevant planning applications.

## **CONCLUSION:**

A Certificate of Lawfulness should be issued.

## **RECOMMENDATION: GRANTED FOR THE FOLLOWING REASONS:**

- 1. The proposed resurfacing and reconfiguration of the existing car parking layout and landscaping would not constitute 'development' as defined by the Town and Country Planning Act 1990 as defined in s55 and in s 336 (1) and the proposal would not contravene the planning conditions imposed by planning application S6/2003/1587/FP.**

### **First Schedule:**

The proposed resurfacing and reconfiguration of the existing car parking layout and landscaping as shown on drawing No.6842-12P Rev 1 received and date stamped 19/12/07

### **Second Schedule:**

Oshwal Centre, Coopers Lane Road, Northaw., Potters Bar, Hertfordshire, EN6 4DG

**DRAWING NUMBERS:**

1:500 Site Location Plan 6842-17-P0 & 6842-16-P0 & 6842-12-P1 – all received and date stamped 19/12/07

**Signature of author..... Date.....**



# WELWYN HATFIELD COUNCIL

**Council Offices, Welwyn Garden City, Herts, AL8 6AE**

**Telephone: Welwyn Garden (01707)357000**

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 AND 192  
(as amended by section 10 of the Planning and Compensation Act 1991)  
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER  
1995  
ARTICLE 24  
CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

## PLANNING DECISION NOTICE – APPROVAL

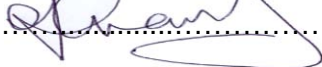
**For Planning Application S6/2007/1950/LU.**

**SALORIA ARCHITECTS  
UNIT 26 CYGNUS BUSINESS CENTRE  
DALMEYER ROAD  
LONDON NW10 2XA**

**For : OSHWAL CENTRE  
COOPERS LANE ROAD  
NORTHAW  
POTTERS BAR  
HERTS EN6 4DG**

The Welwyn Hatfield Council hereby certify that on 19<sup>th</sup> December 2007 the matter described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate to this certificate is lawful within the meaning of section **192** of the Town and Country Planning Act 1990 (as amended), for the following reasons:-

1. The proposed resurfacing and reconfiguration of the existing car parking layout and landscaping would not constitute 'development' as defined by the Town and Country Planning Act 1990 as defined in s55 and in s 336 (1) and the proposal would not contravene the planning conditions imposed by planning application S6/2003/1587/FP.

Signed .....  ..... (Council's authorised officer)  
On behalf of Welwyn Hatfield Council

Date: 15<sup>th</sup> February 2008

### **First Schedule:**

The proposed resurfacing and reconfiguration of the existing car parking layout and landscaping as shown on drawing No.6842-12-P Rev 1 received and date stamped 19/12/07

### **Second Schedule:**

Oshwal Centre, Coopers Lane Road, Northaw., Potters Bar, Hertfordshire, EN6 4DG

### **NOTES:**

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the matter specified in the First Schedule taking place on the land described in the Second Schedule was lawful, on the specified date and, thus was not liable to enforcement action under section 172 of the 1990 Act on that date.

3. This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter which is materially different from that described or which relate to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operation begun, in any of the matters relevant to determining such lawfulness.

**DRAWING NUMBERS:**

1:500 Site Location Plan 6842-17-P0 & 6842-16-P0 & 6842-12-P1 – all received and date stamped 19/12/07