



Appeal Decision

Site visit made on 16 June 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2026

Appeal Ref: APP/V4630/X/26/3377712

Little P's Play Town, Unit H, Maybrook Industrial Estate, Maybrook Road, Walsall Wood, Walsall WS8 7DG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Little Ps against the decision of Walsall Metropolitan Borough Council.
- The application ref 25/1193, dated 8 October 2025, was refused by notice dated 3 December 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is use as a children's role play centre falling within Class E (Commercial, Business and Service) of the Use Classes Order (1987) (as amended)(the UCO).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the appellant's description of development in the 'Description of Existing Use, Building Works or Activity' on the submitted application form, it is clear from the 'Grounds for application for a Lawful Development Certificate' that it is seeking a determination that the use as a children's role play centre falling within Class E of the UCO is lawful. I have therefore used this description in the banner heading above and considered the appeal on this basis.

Main Issue

3. The main issue is whether the Council's decision to refuse the application was well founded. This will turn on whether the previous use of the site fell within Use Class E(g)(iii) of the UCO and if so, whether the current use of the premises falls within Use Class E of the Use Classes Order, such that the change to a children's role play centre was exempted from development by virtue of section 55(2)(f) of the Act.

Reasons

4. An application under section 191(1) of the Act¹ seeks to establish whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then 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

¹ Town and Country Planning Act 1990 (as amended)

expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. Section 55(1) of the Act sets out that, 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.
6. Section 55(2) specifies certain operations or uses of land which shall not be taken for the purposes of this Act to involve development of the land, including (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, of any part of the buildings or the other land, for any other purpose of the same class.
7. The main thrust of the appellant’s case is that the previous use of the premises was light industrial, falling within Use Class E(g)(iii) of the UCO and that the use as a children’s play centre falls within Class E(f) and, given the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) and the Town and Country Planning (Use Classes) Order 1987 (as amended)(the UCO) does not require planning permission.
8. Class E of the UCO concerns commercial business and service uses, and includes use, or part use, for all or any of a number of specified purposes, including (f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public and (g) for (iii) any industrial process, 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.
9. In an LDC, the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the ‘balance of probabilities’. An appellant’s evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
10. The appeal site comprises a red brick building located on the corner of Coppice Road and Maybrook Road and is one of a number of units which back onto Coppice Road, forming part of the Maybrook Industrial Estate. Residential properties along Barrow Close are located to the south west of the industrial Estate. The appeal building is laid out with a counter displaying food and snacks, a seating area with tables and chairs and a play area, with themed rooms and areas, within which children can play.
11. It seems that previously, in respect of applications 24/0828 and 25/0136², the appellant has identified the previous use as general industrial and the proposed use *sui generis*. The appellant suggests this was incorrectly stated and disputes that the former and current uses should be classified in this way. It is not always clear which use class, if any, a use falls into and so it is not unusual for an appellant’s (or Council’s) position on such a matter to change.

² This application was subject to appeal

12. The Council advise that there are two planning permissions at the site, the first, reference BC12197, which was granted on 18 June 1979 for the erection of 7 industrial units (Class IV, Units A to G) and 6 warehouse units (Class X, Units H to N). A second permission was granted under reference BC13575, on 15 November 1979 for the erection of 8 industrial units (Class IV). The Explanatory Note accompanying the UCO explains that Class B2 (general industrial) reflects the old Class IV and Class B8 is based on former Class X (but extends additionally to use of open land and to use as a centre for distribution.)
13. Given the appeal site comprises 1 of 8 buildings, it seems likely that permission BC13575 was implemented. The residential development along Barrow Close was constructed in 2004, when these units would have been occupied. It is suggested that, had the units been occupied by general industrial uses incompatible with residential amenity, planning permission would not have been granted. However, I have no substantive details regarding the permission granted in respect of those houses, or whether mitigation was specifically put in place to address any concerns relating to the use of the nearby units.
14. Furthermore, conditions were attached to the aforementioned permissions granted in respect of the units, controlling noise levels, restricting hours of operation and preventing external working and storage. This, to my mind, simply reflects the concerns that the Council had with respect to allowing a B2 use in this location. A planning application enables such matters to be considered and mitigated.
15. Prior to the use of the site as play centre, the evidence shows that the appeal unit was occupied by T Spinks, which carried out sheet metal fabrication and manufacturing works. The appellant suggests that the site was used by T Spinks for a period in excess of 10 years, a matter which is not disputed by the Council. The appellant describes T Spinks as carrying out 'sheet metal fabrication and manufacturing works' and suggests that such a use falls within Use Class E(g)(iii). The appellant suggests that, in general terms, the process involves cutting or bending of this metal sheets which are sufficiently thin to be cut by laser and are limited to a maximum of approximately 6mm and that 'light machinery' would have been required.
16. However, it is not clear what knowledge the appellant has of the previous activities, other than Google records and Google Earth historical imagery provided. The appellant has provided me with details of the process in support of its case. However, the details provided relate to a different company, Runsom. It is not clear whether they are reflective of the activities undertaken at the appeal site. Furthermore, while the appellant suggests it would not be possible for 6mm sheets to cause significant noise or vibration, this is not demonstrated by the documentation provided.
17. The Council suggests that sheet metal manufacturers typically involve heavy machinery and are often associated with noisy processes, with operations such as cutting, punching, bending and forming sheet metal carried out using industrial equipment like press brakes, stamping machines and shears. It is also suggested that welding, grinding and metal assembly may also take place on site. In my experience, I agree that such activities are likely to generate noise and fumes. Indeed, within a number of photographs provided by the appellant, it appears that there was previously some sort of flue atop the building, which suggests that the

activities taking place within produced fumes or gases which required ventilation to prevent indoor hazards.

18. The appellant has provided me with the name and brief description of the occupants of other buildings in this location which, it is suggested are all light industrial/small manufacturing in nature. Within the Walsall Employment Land Review (WELR), it states 'IN5.5 consists of a number of small mostly manufacturing units, including...T Spinks Fabrications...'. However, it is not clear, either from the descriptions provided, or the WELR which use class these uses fall within.
19. It is suggested that the location, size and scale of the units clearly indicate that this section of the estate was intended for lighter industrial activities, compared with larger units which are characteristic of B2 industrial use. Whether a use comprises a B2 use does not depend upon its intensity, it depends whether it meets the definition of an industrial process (a matter which is not disputed) and does not fall within Use Class E(g)(iii) (a matter which is disputed). B2 uses can be carried out on a modest scale and so the size and layout of the premises is not determinative in this regard.
20. The appellant has also referred to the VOA business rate website which describes the Unit as being a 'workshop' rather than the VOAs alternative classification of a warehouse and factory. However, this classification was not done for the purposes of land use planning, nor does the term correspond to definitions contained in the UCO. This is not, in my view, an indication that T Spinks comprised a use which can be carried out in any residential area without detriment to the amenity of that area.
21. The appellant has drawn my attention to a number of examples of what, they suggest, are substantially larger metal fabrication premises, and which have a Nimbus Classification 'Use Class E' and/or which are located near residential properties. I note that a number of the premises are identified as falling within Use Class E (old class B1), however, it is not clear where this information was derived from, or how the suggested use classes were arrived at. While some of the examples cited may be within close proximity to residential development, this is not, of itself, indicative of a use which can be carried out in any residential area without detriment to the amenity of that area. It may simply be reflective of a historical permission or permissions and is not indicative that such a use falls within Use Class E(g)(iii). I therefore afford this matter very limited weight.
22. The appellant has also drawn my attention to an officer report, within which the officer identifies what is suggested to be a similar site as being a B1 use, reference HPK/2020/0088. However, the report concerns an application for planning permission. The description used is likely to reflect the description used by the applicant in their application form and, since (it appears) nothing turned on whether the use fell within B1 or B2 (at that time) this does not appear to have been a matter the officer needed to explore further. Full details of the application have not been provided and so it is not clear what sort of information was available to the officer regarding the previous use and, it seems the application was refused.
23. While there is no evidence to show that the previous use of the unit gave rise to significant levels of noise, vibration or disturbance as no complaints, enforcement action or environmental health concerns have been identified, I do not agree that it

is reasonable to conclude that the activity operated at a level consistent with light industrial use. The appeal premises is located away from the residential properties along Barrow Close, with a number of other units located between and, as set out above, it is not clear whether conditions were imposed on the residential development, which would have mitigated noise (for example). Furthermore, given there is no evidence of enforcement action, it seems likely the site was operating within the limits of conditions controlling noise levels, restricting hours of operation and preventing external working and storage, which would have helped limit the off-site effects of the use.

24. Although the size of the appeal site is modest, given the types of activities which may be carried out by sheet metal manufacturers, it seems more likely that the use of the site by T Spinks comprised a B2 use than a light industrial use which fell within Use Class E(g)(iii). While a change from B2 (or B8) to B1 may have been permitted development previously, a change from B2 to Class E is not permitted by the GPDO and so planning permission would be required where that change is material.
25. Although there is limited evidence regarding the previous use, I consider it likely that a change from a metal fabrication and manufacturing use to a children's role play centre would have been a material change of use. While the external appearance of the building may not have significantly altered, the characteristics of the two uses are likely to be significantly different in terms of vehicle movements (type and number) and off-site impacts such as noise (machinery noise and loading and unloading compared with noise generated by children playing), fumes and so on.
26. In light of the above, I find that the use of the premises as a children's role play centre is development for which planning permission is required, whether it comprises a *sui generis* use or a Class E use. While the site has been operational since November 2024³, despite no enforcement action having been taken, the use is not immune from enforcement action by virtue of section 171B(3) of the Act⁴, nor is it granted planning permission by the GPDO.
27. While the appeal cannot succeed, given that there is also dispute as to which use class the current use falls into, I will set out my thoughts on the matter below.

Whether the existing use falls within Class E

28. The appellant has advanced their case on the basis that the current use of the appeal site falls within Use Class E(f), which is for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public. A creche or nursery is generally understood to be a place where babies and young children are cared for during the working day and a "Day centre" means premises which are visited during the day for social or recreational purposes or for the purposes of rehabilitation or occupational training, at which care is also provided.
29. While there is limited detail as to how the site actually operates, it seems parents bring their children to the premises to play, rather than to be cared for by staff, as would be typical of a creche or day nursery. Parents and carers may order food or snacks for consumption on the premises while children play. The Council has

³ As indicated on the application form.

⁴ Section 171B(3) provides that, in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

provided me with an advert publicising 'paint a resin tray in a Spring Easter/freestyle theme, Friday 27th March 7:30 – 9:00pm' and suggests that the unit regularly hosts a variety of special ticketed events including cake decorating classes and evening sessions, as well as being used by other businesses to run courses and events such as flower making classes.

30. I would agree it seems unlikely that the use falls under Class E(f) because no care is provided, either for the children, as would be expected of a creche or day nursery, or to those visiting during the day for social or recreational purposes or for the purposes of rehabilitation or occupational training. Nonetheless, it seems to me that such activities *could* fall under Class E, which includes use, or part use, for all or any of the following purposes (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises, (c) for the provision of the following kinds of services principally to visiting members of the public: (iii) any other services which it is appropriate to provide in a commercial, business or service locality, and (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public.
31. The Council suggests that the current use would be more aligned to an 'experience', rather than for social or recreation, especially given the regular and variety of ticketed events it also hosts. However, it is not clear what is meant by the term 'experience', or why it would not fall under Class E(c)(iii) so long as what was being provided was a service which it is appropriate to provide in a commercial, business or service locality. The Council's assessment in this regard appears to be limited to consideration of a "day centre", which perhaps reflects the way the appellant has framed their case, however, it also refers to Class Eiii [sic].
32. It is not clear whether the Council has actually considered Class E as or whole, or limited its consideration to Class E(f). Had I not concluded the previous use of the premises does not fall within Use Class E(g)(iii), this is a matter I would have raised with the parties. However, given my findings in respect of the previous use, it makes no difference to the outcome of the appeal whether the current use falls within Class E or is a *sui generis* use. I therefore make no determination in respect of the current use of the premises.

Conclusion

33. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for an indoor role-play centre falling within Class E (Commercial, Business and Service) of the UCO is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M Savage

INSPECTOR