

DELEGATED PLANNING APPLICATION REPORT

Ward: Abbey

App Ref: 231019/CLE

Address: Jones Stonemasons, 33 Bedford Road, Reading, RG1 7EX

Proposals: Certificate of Lawfulness for existing use of the site as an office with ancillary parking and outbuildings, falling within Use class E.

Case Officer: Nathalie Weekes

Date received (valid from): 21 July 2023

Extended Target Decision date: 18 October 2023

1. INTRODUCTION AND PROPOSAL

The site is situated on the western side of Bedford Road, on a prominent corner with Battle Street.

The site has been used as a stone masonry for the past 160 years, during which the use of the site has evolved over the years with the production and cutting of stone moved to the other AJ Jones site in rural Ipsden in Oxfordshire, to reduce any impact on the neighbouring residential properties. The overall use of the site had historically, originally been classed as B2. Heavy cutting equipment has since been removed and relocated to another site and the application addresses whether the business use has subsequently changed.

The site incorporates an ancillary office (first floor) and retail/show room (ground floor) in the main building, with associated storage and distribution taking place at the side and rear of the building. ET Sheppard Monumental Masons and AF Jones Stone Interiors are sister companies advertised at the site which are associated with the main business. ET Sheppard Monumental Masons delivers headstones and arranges for them to be engraved in a workshop in Henley. AF Jones Stone Interiors provides a range of marble and granite products. No stonework is carried out in connection with business at 33 Bedford Road.

The proposal is for a Certificate of Lawfulness for existing use of the site as an office with ancillary parking and outbuildings, falling within Use class E. It is stated by the applicant that the site should fall within Class E, having changed use under permitted development legislation from Use Class B2 General Industrial space to B1c light industrial since 2012, subsequently resulting in a Class E use for the site. B1c use, prior to September 2020 was for light industrial processes, carried out in a residential area without detriment to the amenity due to noise, vibration, smell, fumes, smoke, soot, ash dust or grit.

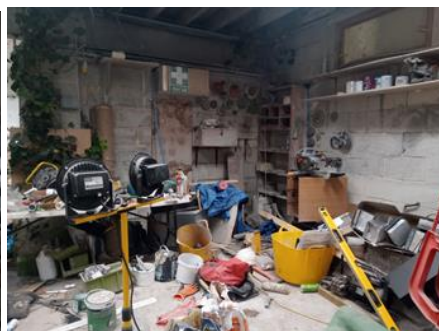
33 Bedford Road appears as an end of terrace Victorian town house with two prominent chimneys, visible within the public realm. The original use of the building when built in 1886, was residential.

The site is adjacent to the Reading Central area boundary which runs along Bedford Road and is opposite the allocated development site at the former Central Swimming Pool.

Although not listed or in a conservation area, the building is considered to be a non designated heritage asset. It is in an AQMA.

Site visit date: 20/09/2023

Photos of site:



2. RELEVANT PLANNING HISTORY

220992 Erection of rear facing dormer and installation of 1no. roof light. Permitted 12/12/2022

181816 Demolition of all stonemasons buildings and structures (Class B1c) barring No.33 Bedford Road and residential redevelopment to provide: a basement and two-storey building and single storey bin/cycle store fronting Battle Street, a three-storey building on the corner of Battle Street and Bedford Road, and the change of use and alterations to No.33 Bedford Road, providing in total 9 (6x1, 2x2 and 1x3 bed) residential flats (Class C3). Withdrawn 29/09/2020

930518 - Alterations to frontage inclusive of new display area and erection of new workshop and storage areas to rear of site. Approved 18/4/94.

3. RELEVANT PLANNING POLICY & GUIDANCE

Annexure 8 "Lawfulness and the Lawful Development Certificate" of Planning Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements' sets out the procedure for assessing applications for certificates of lawfulness:

Section 191(1) of the 1990 Act enables anyone to apply to the LPA for a decision on whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

The onus of proof in a LDC application is firmly on the applicant. Subsection (4) of section 191 provides that if, on an application under the section, the LPA are provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matter described in the application, or that description as modified by the LPA or a description substituted by them (see paragraph 8.35 below), they shall issue a certificate to that effect; and, in any other case, they shall refuse the application’.

Para 8.3 states, ‘by virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), *a failure to comply with any condition or limitation subject to which planning permission has been granted is* "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.’

Equality Act 2010:

In determining this application the Council is required to have regard to its obligations under the Equality Act 2010. However, there is no indication or evidence (including from consultation on the application) that the protected groups identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application. Therefore, in terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the development.

Consultation responses

RBC Environmental Protection - There are no noise complaints on file for the relevant time period. There have only been a couple of cases regarding a messy builder’s yard and a trade waste application.

RBC Planning Enforcement - There is no enforcement record for the site

RBC Electoral services - There are no records of the address.

RBC Business rates - Business rates have been payable for workshop and offices [ie. No clarity]

RBC Legal team - The argument seems to be that the heavy cutting equipment (which made the on-site use B2) was removed in 2012, and therefore that the B2 use ceased in 2012 and became a B1 use - light industrial with associated offices. This use then continued and became a Class E use when the Use Classes Order was amended.

The Statutory declaration from the former employee with experience at the site collaborates with the date that the large lifting crane was relocated and evidences that the existing use of the site has changed over recent years. No comments have been received from neighbours or the RBC Environmental Protection Team to provide any information to challenge the evidence as submitted. The evidence points to a B1c light industrial use at the site. Stronger emphasis should be given to the statement from an experienced employee rather than an agent preparing a planning application for the site, when considering the evidence presented as a matter of fact and degree in order to make a decision of planning balance.

Submitted evidence

APL-399 AF Jones Stonemasons Application letter

Statutory declaration states an employee’s understanding of the use of the site, site location plan, existing floor plan 2228-P100 P1, Crane testing certificate at Ipsden on 30 June 2012,

Google Streetview - June 2009, Google Streetview - September 2012, signed by Clarke & son Solicitors.

2228-P001 Rev P2 Block Plan

2228-P002 Rev P2 Site Location Plan

Received 21 July 2023

The application letter states:

- that the use of the yard for B2 purposes fully ceased in 2012,
- that the yard is used for parking and the buildings at the rear are incidental to the primary office.
- That there was no requirement to notify the council of the change
- Reference is made to Class I Industrial Conversions
- Also that the site would be immune from Class E use due to a 10 year rule.

The applicant's statement of case states:

1) A material change of use was permitted in 2012 on 30/06/2012 under Class B, of Part 3 (Change of Use) of the GPDO 1995 to change from B2 (General Industrial) to B1 (Business - inc. office and light industrial) of the 1987 Use Classes Order, prior to the 2020 amendment. Following the 2020 amendment (No.757), which deleted Use Class B1, the Site fell within Use Class E (Commercial, Business and Service).

2) The Site is in a use that falls within Use Class E for over 10 years and therefore is immune from enforcement action.

4. ASSESSMENT

In order to grant a Certificate of Lawfulness sufficient evidence must be supplied to demonstrate an existing use of the site to be considered in Class E use.

Noise may be a determining factor in assessing whether a use falls within Class B2 General Industry where noise levels would be considered to adversely impact the amenity of local residents due to noise and disturbance and whether soundproofing would be required to comply with a definition of B1 use. It is necessary to assess whether the use could be carried out in any residential area without detriment to the amenity of that area.

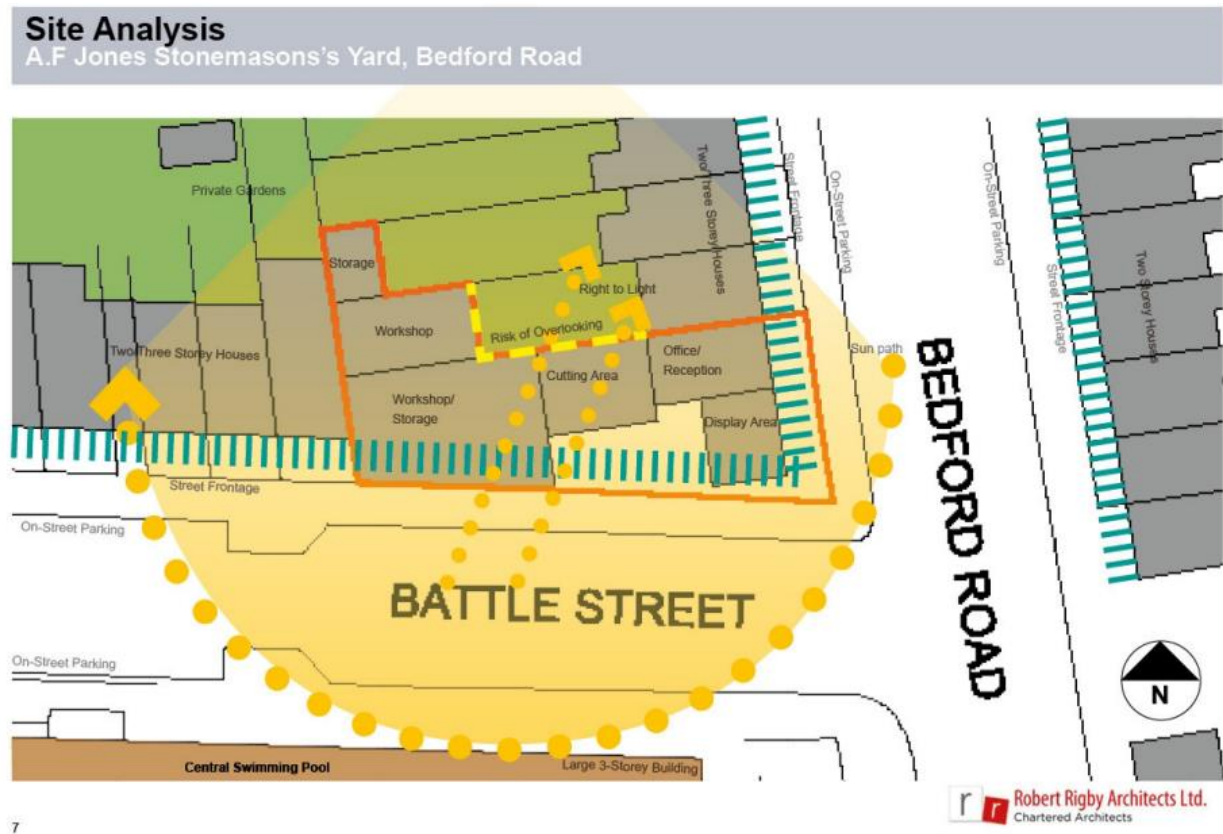
Although a statutory declaration has been provided stating an employee's understanding of works undertaken at the site, no business records or transactions have been provided to evidence or demonstrate the use of the site or detail the equipment available for use on site.

In 2018 a Full plans Application submission Design and Access Statement was submitted for planning application 181816 by Robert Rigby Architects Ltd on behalf of A.F Jones Stonemasons Yard on 19 October 2018 with a site plan that illustrates storage workshop and cutting areas and display areas. History for the site was provided dating the stonemason family back to 1858, with a presence at Bedford Road and Battle Street from the mid 1860s. It was stated on p9 of that DAS that the site was in B2 General Industrial Space of about 200m² and that a proposed redevelopment would result in the loss of B2 land.

Although the proposal will result in a loss of a B2 General Industrial space of about 200m², it does not fit with its residential context. The current use is detrimental to existing and future residents through the dust, noise and excess traffic generated.

The application for demolition of existing industrial buildings and redevelopment at the site was withdrawn.

Plan submitted for 181816



In 2022 the existing floor plan 2228 P100 P1 submitted for application 220992 for ancillary office space, illustrated a workshop and storage area on site.

Upon the site visit in 2022, it could be confirmed that the end of terrace building was in ancillary office use, however when considering the whole of the site, it would provide industrial and storage uses. Staff on site verbally confirmed that the site was still used for logistics and that materials were still stored on site. The external appearance of the site has remained unchanged since 2022.

Aerial photo 2013 ishare GIS Reading Council map



Google earth Aerial photo 2023



Legislation changes to the GDPO

3 June 1995

The Town and Country Planning (General Permitted Development) (England) Order 2015 UK Statutory Instruments 2015 No. 596 SCHEDULE 2

Class I - industrial and general business conversions

Permitted development

I. Development consisting of a change of use of a building—

(a) from any use falling within Class B2 (general industrial) or B8 (storage or distribution) of the Schedule to the Use Classes Order, to a use for any purpose falling within Class B1 (business) of that Schedule;

(b) from any use falling within Class B1 (business) or B2 (general industrial) of the Schedule to the Use Classes Order, to a use for any purpose falling within Class B8 (storage or distribution) of that Schedule.

Development not permitted

I.1 Development is not permitted by Class I, where the change is to or from a use falling within Class B8 of that Schedule, if the change of use relates to more than 500 square metres of floor space in the building.

Amended to:

The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021 UK Statutory Instruments 2021 No. 814 Article 4 on 01/8/2021.

“Class I - industrial conversions Permitted development

I. Development consisting of a change of use of a building from any use falling within Class B2 (general industrial) of Schedule 1 to the Use Classes Order, to a use for any purpose falling within Class B8 (storage or distribution) of that Schedule.

Development not permitted

I.1. Development is not permitted by Class I if the change of use relates to more than 500 square metres of floor space in the building."

In 2018 the use was described to the Local Authority by the applicant as in B2 use. It is no longer possible to change from B2 to B1c.

Information previously submitted to the Local Authority by A.F Stonemasons from the agent conflicts with information provided for application 231019. The site would be deemed to have retained its B2 use unless any substantial evidence is provided. The RBC legal team have confirmed that the statutory declaration in this case is to be given more weighting unless there is any conflicting evidence.

33 Bedford Road is currently listed for business rates as a 'workshop and premises' under The Valuation Office Agency. The description is applicable to industrial units built before 1950 in urban locations of Reading, or of a similar standard to property of this age. The premises Valuation Office description does not differentiate between different types of industrial use such as B1c, B2 or B8 use. Information is available online at

<https://www.tax.service.gov.uk/business-rates-find/valuations/start/4700279000>

The red brick end of terrace building at 33 Bedford Road appears to be in use as an ancillary office for the stonemason's business use and for the additional Ipsden premises. It is clear that B2 and B8 uses have been a historic part of the original longstanding historic use as a stonemasons that has been established over 160 years ago. Although a B2 and B8 use cannot be changed under the current use class order, the evidence presented for the application strongly suggests that works undertaken at the site have changed since 2012. The warehouse/storage area have remained in situ, used mainly for storage and small projects with less noise impact on the surrounding residential area. The external buildings have become dilapidated and neglected with broken windows and encroaching vegetation growth, despite materials and tools remaining in situ.

Consultation letters were sent to 6, 8, 10 Battle Street, 35, 36, 37, 38 Bedford Road for a 2 week consultation period to try and investigate whether there have been any issues arising from the site. No comments were received in respect of the proposed Certificate of lawfulness for a change of use. There are no noise complaints recorded by the Environmental Protection Team.

Conclusion

The PPG makes the position clear on how the evidence submitted is to be considered. It says:-

"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability".

There is no evidence of noise complaints at the site since 2012 and no conflicting information has been provided by neighbouring residents. The use of the site is evidenced to have changed from B2 with ancillary offices to Class E for light industrial processes which can be carried out in a residential area (formerly B1c) with ancillary offices.

Some evidence contradicts the applicant's version of events in information provided by planning agents for previous planning applications at the site, but it is less clear that it

“make[s] the applicant’s version of events less than probable”. The statutory declaration is more likely to be accurate than the statement in the previous application. All information relating to the above site has been weighed up, with a recommendation for approval based on a planning judgement of the evidence available.

RECOMMENDATION

The submitted evidence demonstrates that the use of 33 Bedford Road as an office with ancillary parking and outbuildings, falling within Use class E is either lawful or otherwise immune from enforcement action.

1:1250 Location Plan (Not to scale)

