

DELEGATED PLANNING APPLICATION REPORT

Ward: Kentwood

App Ref: 231103/CLE

Address: 127a Loverock Road, Reading, RG30 1DZ

Proposals: Application for a Certificate of Lawfulness for Existing Development to establish that development pursuant to planning permission reference 190591 has been lawfully implemented

Case Officer: Marcie Rejwerska

Date received (valid from): 4 August 2023 **Target Decision date:** 29 September 2023

1. SITE DESCRIPTION

The application site is located within the industrial area north of Portman Road, at the junction of Loverock Road and Wigmore Lane. The site contains four units which are currently vacant, associated parking space, and hoarding has been erected to secure the site.

The site is within the Portman Road Core Employment Area (EM2h) and the Air Quality Management Area. The railway embankment to the north of the site is identified as an area of biodiversity interest. The north area of the site is within Flood Zones 2 and 3. Additionally, an Article 4 Direction is in place against conversions to or development of new dwellings.



Application site location. Image taken from Google Maps on 19.09.2023.

2. PROPOSAL AND SUPPORTING INFORMATION

A Certificate of Lawfulness (Existing) is submitted seeking confirmation of the commencement of development in accordance with Condition 1 of planning permission reference 190591 (dated 29 April 2020). Condition 1 details the development must be carried out within 3 years of the original decision date (i.e. by 29 April 2023).

The following information was submitted by the applicant in support of the application:

- 182.01.01 Rev. B Location Plan dated 18 June 2018, received 4 August 2023
- Statutory Declaration of Darren Steer of Junction 7 Limited in support of an application for a Certificate of Lawfulness of Existing Use or Development, dated 31 July 2023, received 4 August 2023
- Statutory Declaration of David Lunt, Director of Francis Hunter Project Management in support of an Application for a Certificate of Lawfulness of Existing Use or Development, dated 31 July 2023, received 4 August 2023
- Supporting Statement by Gowling WLG, dated 26 June 2023, received 4 August 2023

3. RELEVANT PLANNING HISTORY

127 Loverock Road

- 920584 - Refrigerated storage, distribution and offices. Certificate of Lawfulness for a Proposed Use. - Withdrawn 25/01/93
- 920966 - Erection of garage for maintaining cars - Granted 24/09/92
- 930402 - Change of use from industrial/warehouse and offices to social club and ancillary offices D2. - Withdrawn 27/01/94
- 930577 - Change of use to refrigerated storage, and distribution and offices (Use Class B8) - Granted 08/04/93
- 950508 - Increase in height of existing door opening - Granted 23/01/96

127a Loverock Road

- 020161 - New MOT testing bay and new roller shutter door. - Granted 04/09/02
- 1910591 - Demolition of 2 number existing single storey buildings, removal of telecoms plant. Replacement with new single unit for B1c, B2 and B8 use classes with ancillary offices including associated service areas, car parking and landscaping. Modified access onto Wigmore Lane. - Granted 29/04/20
- 221873 - Application for approval of details reserved by conditions 5 (Contaminated Land), 6 (Remediation Scheme), 10 (CMS), 14 (Cycle Parking), 17 (AMS and TPP), 18 (SUDS), 20 (BREEAM), 22 (Photovoltaics/Solar Water) of Application 190591 - Discharged 06/03/23
- 231076 - Temporary change of use to open storage (Use Class B8) for up to 5 years, with associated works - Not yet determined

127b Loverock Road

- 030594 - Use of site for private taxi hire - Granted 11/06/03
- 030619 - Private hire company and car hire premises. - Refused 01/04/03

4. RELEVANT PLANNING POLICY AND GUIDANCE

Town and Country Planning Act 1990 (as amended) Section 191

Section 191(1) of the 1990 Act enables anyone to apply to the local planning authority 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 Lawful Development Certificate application is firmly on the applicant. Subsection (4) of Section 191 provides that if, on an application under the sections, the local planning authority 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 local planning authority or a description substituted by them, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

Paragraph 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.' 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.'

Town and Country Planning Act 1990 (as amended) Section 56

Section 56(1) of the 1990 Act states 'development shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations are begun. Subsection 4 clarifies "material operations" are defined as:

- a) "Any work of construction in the course of the erection of a building;
- aa) Any work of demolition of a building;
- b) The digging of trenches which is to contain foundations, or part of the foundations, of a building;
- c) The laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in Paragraph (b);
- d) Any operation in the course of laying out or constructing a road or part of a road;
- e) Any change in the use of any land which constitutes material development."

The matter to be determined is solely on the basis of evidential fact and planning law. The planning merits of the use are not relevant, and therefore are not considered in the assessment of this application.

5. CONSULTATIONS

RBC Legal Services - Based on the description of the works carried out, the works were sufficient to constitute commencement of the development for the purposes of s54(4) TCPA 1990.

6. APPRAISAL

With reference to the information submitted, it is clear that the applicant has taken the steps to implement the permission to a point where the permission is kept 'alive'. This has been done by completing parts of the approved drainage works including the installation of mains and backfilling the trenches. The photos and statutory declarations, from contractors who undertook the works, are a clear record of this.

This is a minimal start, nonetheless, based on the information provided (as outlined above), it is evident that works to implement the permission begun within the 3 year period as specified

by Condition 1 of permission 190591. Additionally, this assessment has been reviewed and agreed to by the Council's Legal Services.

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.

**RECOMMENDATION
GRANT CERTIFICATE**

Reason:

1. On the basis of the available evidence and on the balance of probabilities, it is considered that the development commenced in accordance with Condition 1 of planning permission 190591 and is therefore immune to enforcement action. It is therefore considered a Certificate of Lawfulness should be granted.

As per NPPF Planning Practice Guidance - Lawful Development Certificates (Paragraph 004 ID: 17c-004-20140306) this certificate applies only to the lawfulness of the development in accordance with planning legislation. It does not remove the need to comply with any other legal requirements such as Building Regulations.

In reaching this decision, the local planning authority has taken into account the following information submitted by the applicant:

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