

Delegated Application Report

Address: Forbury Retail Park, Forbury Road, Reading

Application No: 171205/CLE

Proposal: Commencement of development in accordance with condition 1 of planning permission reference 140574 (dated 01/08/2014)

Case Officer: Jonathan Markwell

Target Date: 12/9/17

Site Description and Surrounding Area

The application site is located within the car park area of Forbury Retail Park between the large retail warehouse buildings (Units 1 to 5) and Forbury Road. The land is currently surfaced in tarmac and marked out with vehicle circulation routes and parking spaces.

The site is at a lower level than the main road with an embankment between the site and road which contains trees that are subject to TPO 205/07.

The site is part of allocated site RC3c 'Forbury Retail Park' in the Reading Central Area Action Plan which sees the wider retail park site as the focus of a new residential community. Figure 9.1 of the RCAAP shows this as being a long term aspiration.

A fast food takeaway/restaurant/drive through exists within the separate car park to the east of the current site which serves a separate group of retail units (numbers A1 to A4 Forbury Retail Park).

Proposal

A certificate of lawfulness (existing) is submitted seeking confirmation of the commencement of development in accordance with condition 1 of planning permission reference 140574 (dated 01/08/2014). Condition 1 details the development must be carried out within 3 years of the original decision date (01/08/2014 = 01/08/2017). In support of this the following has been submitted:

Proposed Site Plan 2225/G121 Rev G, as received 18/07/17

Proposed External Elevations 2225/G126 Rev F, as received 18/07/17

140574 Decision notice, dated 01/08/14, as received 18/07/17

151936 Decision notice, dated 16/12/15, as received 18/07/17

Report on archaeological watching brief by MOLA, Issue 2 dated 17/07/17, as received 18/07/17

Foundation Design Document by Acies, as received 18/07/17

Letter by Savills Ref L170705 SAV LBR - Implementation Notification, dated 05/07/17, as received 18/07/17

Letter by Savills Ref L170718 SAV RBC - LDC Covering Letter, dated and received 18/07/17

Implementation of Planning Permission Ref: 140574 Photographic Supplement- Operational Development (10 photographs) by Savills, as received 18/07/17

Relevant Planning History:

130922/FUL - Erection of a building measuring 165 sq m for use within class A1/A3/A5; creation of external bin store and seating area; installation of plant and signage structures; amendments to car park layout and associated hard and soft landscaping - Granted 09/10/13. This has not been implemented.

140574/FUL - Erection of a building measuring 246 m² for use within class A1/A3/A5, creation of enclosed bin store and yard, installation of plant, signage structures, external seating area, amendments to car park layout, hard and soft landscaping, and display of advertisements. Granted 01/08/14.

140575/ADV - Signage associated with proposed new drive-through building. Granted 01/08/2014.

150085/FUL: Erection of a building for use within class A1/A3/A5, Creation of enclosed bin store and yard, Installation of plant, signage structures, and external seating area, Amendments to car park layout and hard and soft landscaping, And display of advertisements. Granted 23/03/15.

150086/ADV - 4 Fascia signs. Granted 24/03/15.

151214/NMC - Non-material amendment to planning permission 150085 granted on 23/03/2015 to alter the wording of condition 5 (Landscaping), amending the timing for the submission of details. Withdrawn 17/08/15.

151095 - Variation of conditions 2 (approved plans), 3 (construction method statement) and 5 (landscaping) of planning permission 150085. Granted 18/8/15.

151936 - Approval of conditions 3 (Construction Method Statement) and 5 (Landscaping) of planning permission 140574. Granted 16/12/2015.

Relevant Planning Policy & Guidance:

Town and Country Planning Act 1991 (as amended) Section 191

NPPF Planning Practice Guidance - Lawful Development Certificates - ID: 17c

Annex 8 "Lawfulness and the Lawful Development Certificate" of Planning Circular 10/97 'Enforcing Planning Control: Legislative Provisions and Procedural Requirements"

Annex 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, 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. 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.*’

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 consideration of the application.

Consultation Responses:

Legal Services

The Council’s Planning Solicitor was forwarded the submission put forward by the applicant, together with details of the relevant planning history. On the basis of this, on the balance of probabilities, it was advised that the certificate should be issued. More specifically, the Council’s Planning Solicitor stated satisfaction that the Certificate of Lawfulness can be issued on the information provided.

Appraisal

With reference to the photographic supplement, it is clear that the applicant has taken clear steps to implement the permission to a point at which the permission is kept ‘alive’. This has been done by cutting square holes in the car park, lining these with reinforcing mesh and then backfilling with concrete to form the basis of a foundation pad, then providing a temporary tarmac covering. The photos are a clear record of this.

Clearly, 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 specified by condition 1. As also noted above, this has also been discussed and confirmed following discussions with the Council’s Planning Solicitor.

Recommendation

Issue Certificate of Lawfulness

Reason to be stated on the decision notice

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 140574 and is therefore immune to enforcement action. It is therefore considered a Certificate of Lawfulness should be granted.

Informatives to be stated on the decision notice

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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Proposed External Elevations 2225/G126 Rev F, as received 18/07/17
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Plan for second schedule of decision notice

