

Delegated Application Report

Address: 118A Oxford Road, Reading

Application No: 171173/CLE

Proposal: Commencement of development in accordance with condition 1 of planning application references 130602 and 141780

Case Officer: Jonathan Markwell

Target Date: 8/9/17

Site Description and Surrounding Area

The site is located on the junction with Oxford Road and Trinity Place. It contains an existing flat roof, rectangular 2 storey Class A1 retail unit, occupied by Richer Sounds. The front elevation (fronting onto Oxford Road) contains full height glazing at ground and first floor; and vehicle parking for 5 cars on the site frontage. Immediately to the rear (north) the site is bounded by the parking area that serves 10 Trinity Place, a 4 storey flatted block of sheltered accommodation for the elderly. This parking area provides separation between the two buildings. To the east of the site there is a two/three storey vacant public house, with a pitched roof, and further east on the opposite side of Bedford Road there are three storey listed properties. To the west is the more contemporary 'Odd Fellows Hall', with a flat roof (separated by the road width of Trinity Place), and 118 Oxford Road (Carlisle House residential flats) and the Holy Trinity Church, the latter are both Listed.

The wider surrounding area is characterised by varied forms of architecture and heights of buildings, opposite the application site the southern side of the Oxford Road forms the boundary of the Russell Street/Castle Hill Conservation Area with a terrace of listed buildings within this conservation area forming the Oxford Road street frontage. As such, although the application site building is not listed or located within a conservation area, it is opposite and close-by to listed buildings and a conservation area. It is also located within the designated Reading Central Area Action Plan (RCAAP) area, albeit outside of any specified policy area attached to the RCAAP. It is however within an air quality management area and Oxford Road is a designated cycle route.

Proposal

A certificate of lawfulness (existing) is submitted seeking confirmation of the commencement of development in accordance with condition 1 of planning application references 130602 and 141780. Condition 1 details the development must be carried out within 3 years of the original decision date (03/07/2014 = 03/07/2017). In support of this the following has been submitted:

Supporting letter from Aspbury Planning, Ref APA/JRPRO/16/1488, dated 12/07/17, as received 13/07/17

Letter from Twokan Interiors Ref Demolition of Parapet wall, dated 28/06/17, as received 13/07/17

Photographs taken on 28/06/17 x6, as received 13/07/17

Photographs taken on 29/06/17 x10, as received 13/07/17

010 Existing Site Layout, as received 13/07/17
100 Proposed Site Layout, as received 13/07/17

An officer site visit on 10/05/17 (as part of application 170436) confirmed the parapet on the elevation shown in photographs by the applicant was still in place on this date (verified by photographs).

Unaccompanied officer site visits on 29/06/17, 03/07/17, 04/07/17 and 02/08/17 confirmed demolition works to the parapet on the west side elevation, as shown in photographs by the applicant, had been carried out (verified by photographs).

Relevant Planning History:

121717 (12/ 01946/FUL) - Two storey extension to existing shop - Withdrawn.

130602 - Additional floor to existing two storey retail unit (re-submission of 12/01946/FUL) and associated alterations to the front elevation. Granted following completion of s106 legal agreement 03/07/14.

141780 - Additional floor to existing two storey retail unit and associated alterations to the front elevation without complying with conditions 4, 13 and 14 of planning permission 130602. Variation of conditions approved following completion of s106 legal agreement 30/03/15.

150022 - Application for approval of details reserved by condition (130602). Split decision issued 15/06/15. Conditions 6 (trees), 8 (tree pit specifications), 9 (tree after care), 10 (CMS) and 11 (dust and noise) discharged. Conditions 3 (materials), 5 (noise) not discharged.

150542 - Fascia sign, projecting sign, window signage. Approved 22/07/15.

170436 - Additional floor to existing two storey retail unit and associated alterations to the front elevation. Current application under consideration.

170879 - Discharge of condition 3 (materials) of planning permission 130602 (dated 03/07/2014). Condition discharged 27/06/17.

170910 - Discharge of condition 13 (Interim BREEAM certificate) of permission 141780 (dated 30/03/15). Condition discharged 15/06/17.

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, it was stated that the works evidenced, although minimal, are on balance sufficient provided they are part of the proposal. If that is so then you can issue the Certificate.

Appraisal

Based on the officer site visits (as detailed above), it is evident that works to implement the permission have begun. In terms of the foundations, it would have been preferable for more details to be submitted by the applicant, but on the basis of the demolition works evident at the site, it is considered that a certificate can be issued. As 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 application references 130602 and 141780 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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Plan for second schedule of decision notice

