

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	<b>08/03/2018</b>
		NA	<b>Consultation Expiry Date:</b>	NA
<b>Officer</b>			<b>Application Number(s)</b>	
Jonathan McClue			2017/6884/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
100 Avenue Road London NW3 3HF			Refer to Decision Notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
The demolition of part of the existing building as shown on Demolition Works Plan Number: LL443-275-0015, in accordance with section 56(4) of the Town and Country Planning Act 1990 constituting a material operation for commencement of planning permission 2014/1617/P (allowed under appeal ref: APP/X5210/W/14/3001616 dated 18/02/2016) in accordance with condition 1.				
<b>Recommendation(s):</b>		Grant Certificate of Lawfulness (Existing)		
<b>Application Type:</b>		Certificate of Lawfulness (Existing)		

Conditions or Reasons for Refusal:	Refer to Decision Notice			
Informatives:				
<b>Consultations</b>				
Adjoining Occupiers:	No. notified	00	No. of objections	22
Summary of consultation responses:	<p>As per the Town and Country Planning (Development Management Procedure) (England) Order 2015, statutory consultation and publicity is typically required for full planning applications; however, there is no statutory requirement for consultation/publicity for Certificates of Lawfulness applications.</p> <p>The National Planning Practice Guidance (NPPG), which contains Government guidance on the planning process, contains guidance on Certificates of Lawfulness applications (also referred to as Lawful Development Certificates) <a href="#">here</a>.</p> <p>Paragraph 008 (Reference ID: 17c-008-20140306) of the NPPG makes it clear that <i>'There is no statutory requirement to consult third parties including parish councils or neighbours' and that 'Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.'</i></p> <p>Notwithstanding the above, the Council has an 'email alerts' system that notified relevant subscribers to the application, which was registered on 18/12/2017.</p> <p>At least 34 objections have been received from nearby residents, including from the Chair of Winchester Road Residents Association, Save Swiss Cottage, the Chair of the Cresta House Residents Association and the Combined Residents Associations of South Hampstead (CRASH). A letter has been sent from Tulip Siddiq MP on behalf of residents. Below is a summary of the main objections raised by third parties during the application period:</p> <ol style="list-style-type: none"> <li>1) The applicant has not received permission from Camden Council and the removal of the ramp and stairs on 100 Avenue Road is a blatant attempt to undermine and circumvent the planning process</li> <li>2) The applicant must gain approval of the Construction Management Plan (CMP) before they can demolish 100 Avenue Road</li> <li>3) The applicant is being aggressive and ruthless in pursuing their commercial interest, without paying any respect to the planning permission process. Their unreasonable behaviour must be curbed, and proper planning permission process must be followed, to ensure the interests of the local neighbourhood are considered and duly protected</li> <li>4) The Council should act on this before a bad precedent is set. Otherwise, other property developers will see other potential sites within the Borough and circumvent planning processes</li> <li>5) The application is an attempt to comply with time requirements</li> </ol>			

- 6) The Construction Management Plan; Service Management Plan; Travel Plan and External Public Open Space Plan are all Section 106 pre-commencement conditions that have not yet been satisfied
- 7) The works have removed the only dedicated wheelchair ramp access for the southern section of the building, meaning equal access for disabled people and workers taking part in any demolition would not be provided under the Equality Act 2010. Safe access for all construction workers must be provided as per the Construction Management Plan
- 8) The stair and ramp that was removed was the only fire exit for the middle section of the building onto the street. This poses a fire safety risk for works during the pre-demolition phase
- 9) How can the removal of the staircase and ramp not require planning permission, whilst constituting a 'material alteration' that would implement commencement of an approved planning permission

**Officer comments:**

*Each of the above grounds of objection are addressed in detail below and are covered within the main body of the text.*

*It is important to note that in accordance with Government guidance, the scope of a Certificate of Lawfulness (Existing) application is to determine whether an existing use or operational development is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990 (as amended). Para 009 Reference ID: 17c-009020140306 of the NPPG states:*

*'A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application'*

*Further to the above, the NPPG (para 004 Reference ID: 17c-004-20140306) makes it clear that:*

*'The grant of a certificate applies only to the lawfulness of development in accordance with planning legislation.'*

*In summary, Certificate of Lawfulness applications are a legal determination that need to be assessed against planning legislation. Planning considerations and other legislation are not relevant for the purposes of the assessment. This is made clear in Government guidance.*

- 1) *The demolition works undertaken are part of the approved planning permission under 2014/1617/P, so do not require separate permission. A Demolition Notice was obtained from Camden's Building Control to ensure the necessary permissions under the Building Act were acquired. The pre-demolition planning conditions have been discharged and all other pre-commencement requirements are not considered applicable to the works. A thorough assessment of*

*the CLEUD application is included in section 4 of the main body of the report, in paras 4.1-4.11*

- 2) The demolition works, due to their scale and impact, would not require a CMP to be in place. The CMP will need to be discharged before the substantial demolition of the building occurs. Paras 4.10-4.12 (below) cover this in more detail*
- 3) This CLEUD application must be determined on the basis of whether the development has been lawfully commenced in accordance with planning legislation. The applicant's behaviour is not a material consideration*
- 4) As above in point 3, the CLEUD must be judged on its merits and considerations of the potential impact on other sites is not relevant to this assessment*
- 5) The CLEUD has been submitted to formalise the commencement of the development, meaning that the permission will be extant. It is common for developers to undertake enabling works to ensure a planning permission does not expire, to prevent having to unduly go through the planning process again*
- 6) As per point 2 (above), the pre-commencement requirements are not considered to be triggered by the development that has been undertaken. Furthermore, as explained in paras 4.10-4.12 (below), there has not been a breach under section 171A of the Town and Country Planning Act 1990 (as amended) and S106 matters are separate from development control*
- 7) The Equality Act 2010 and the public sector equality duty is considered in all decisions of the council. However, none of these considerations affect the determination of this application, which is assessing whether works carried out are lawful under planning permission as a matter of fact*
- 8) Fire safety matters are not relevant to the determination of this application. During the pre-demolition phase of the development, the contractor(s) will be required to adhere to the relevant fire safety legislation as they will be bound by national legislation to do so*
- 9) The application is made on the basis that the demolition works constitute a 'material operation' under section 56(4) of the Town and Country Planning Act 1990 (as amended). The works are expressly included under the approved planning permission 2014/1617/P and therefore are considered to constitute implementation and compliance with that consent. Whether or not the works in isolation would require planning permission is not mutually exclusive as to whether the works are a 'material operation' (i.e. **works do not need to require planning permission to be considered a material operation**).*

## Site Description

The application site is bounded on its western side by Avenue Road and the busy Swiss Cottage/Finchley Road junction and gyratory. Ye Olde Swiss Cottage pub is located directly opposite on the western side of Avenue Road, facing onto the junction. The site has an area of 6,162m<sup>2</sup>.

The site is bounded on its northern side by the western end of Eton Avenue, which is pedestrianised and occupied by an occasional market. On the northern side of Eton Avenue is the School of Speech and Drama, which is 8 storeys high.

Northeast of the site is the Hampstead Theatre, which fronts onto Eton Avenue. A pedestrian route between Eton Avenue and Swiss Cottage Open Space separates the site from the Hampstead Theatre.

To the east of the site is Swiss Cottage Open Space, which is designated open space (Swiss Cottage Open Space - 113). To the east of this open space is the rear of properties fronting Winchester Road, which are generally commercial at ground floor level and residential above and also a community centre, the Winch at number 21, which works with children, young people, families and members of the local community. The Visage residential development is located south-east of the open space and consists of 5 storeys, beside the open space, rising up to 16 storeys as it moves south. The Belsize Park Conservation Area is the closest conservation area and is located to the east, on the other side of the open space.

To the south of the site is a small area of open space, a grade II listed sculpture and the Swiss Cottage Library (designed by Sir Basil Spence), which is grade II listed. To the south-east of the site (on the southern side of the open space) is Swiss Cottage Leisure Centre.

In February 2016 planning permission (ref. 2014/1617/P) was granted on appeal for the demolition of the existing building on the site to be replaced by a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (Class C3) and up to 2,391m<sup>2</sup> of retail, food and drink and community uses.

## Relevant History

**2014/1617/P** - Demolition of existing building and redevelopment for a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (Class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (Classes A1/A2/A3) inclusive of part sui generis floorspace for potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (class D1) with associated works including enlargement of existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements - Granted conditional planning permission subject to a Section 106 legal agreement on appeal on 18/02/2016.

**2016/1321/P** – Amendment to Conditions 27 and 31 (to allow discharge of the conditions prior to the commencement of belowground works) of planning permission 2014/1617/P dated 18/02/16 for demolition of existing building and redevelopment for a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (Class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (Classes A1/A2/A3) inclusive of part sui generis floorspace for potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (class D1) with associated works including enlargement of existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements – Withdrawn on 22/03/2016.

**2016/1893/P** - Detail of air quality monitoring required by condition 24 of 2014/1617/P dated 18/02/2016 – Granted on 27/06/2016

**2016/2128/P** – Non-material amendment for amendment to Condition 31 (to allow discharge of the conditions prior to the commencement of below-ground works) of planning permission 2014/1617/P

dated 18/02/16 for demolition of existing building and redevelopment for a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units, commercial space and associated works – Refused on 05/05/2016

*Reason for refusal: officers were not satisfied that the proposal was non material, officers considered that the demolition of the existing buildings without details on the feasibility of the erection of the replacement building could result in a delay in the proposed building being erected, officers therefore considered this to be a material amendment.*

**2016/2048/P** - Non-material amendment to Condition 27 (u-values and thermal bridging) of planning permission 2014/1617/P dated 18/02/16 to require details before the relevant part of the work commences - Granted on 10/05/2016.

**2016/2352/P** - Details of tree protection required by condition 21 of planning permission 2014/1617/P dated 18/02/2016 – Granted on 27/06/2016

**2016/2803/P** - Variation of condition 31 of planning permission 2014/1617/P dated 18/02/16 for demolition of existing building and redevelopment for a 24 storey building comprising a total of 184 residential units and flexible commercial and community use with associated works namely to change the point at which full details are submitted – Withdrawn on 28/07/2016.

**2016/6699/P** - Details pursuant to Condition 31 (outline method statement) of planning permission 2014/1617/P dated 18/02/16 – Granted on 20/06/2017

**2017/3139/P** - Details of u-values and approach to thermal bridging as required by condition 27 of planning permission 2014/1617/P dated 18/02/2016 - Granted on 17/07/2017

**2017/3838/P** - Details of the west-facing balustrade to partially discharge condition 15 (microclimate mitigation measures) of planning permission 2014/1617/P dated 18/02/2016 - Granted on 01/08/2017

**2017/4196/P** - Details of the levels at the interface of the development with the boundary of the property and the public highway to discharge condition 4 (boundary levels) of planning permission 2014/1617/P dated 18/02/2016 – Granted on 30/08/2017

**2017/4036/P** - Non-material amendment of planning permission 2014/1617/P dated 18/02/16 has been submitted for a series of internal and external changes to the buildings. The application has been referred to Planning Committee and is waiting to be decided.

**2017/5859/P** - Details of Geoenvironmental Interpretative Report and Laboratory results calculations to discharge condition 14 (1) (land contamination survey and lab results) of planning permission 2014/1617/P dated 18/02/2016 – Granted on 12/12/2017

**2017/6638/CMP** – A draft Construction Management Plan (CMP) has been submitted to Planning Obligations to be reviewed. An application has been setup to facilitate the accessing of CMP and recording of consultation comments. The decision will be reported to Member's Briefing.

## **Relevant policies**

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

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

Section 336 of the Town and Country Planning Act 1990 (as amended)

Section 55 of the Town and Country Planning Act 1990 (as amended)

Section 171 of the Town and Country Planning Act 1990 (as amended)

Section 106 of the Town and Country Planning Act 1990 (as amended)

## Assessment

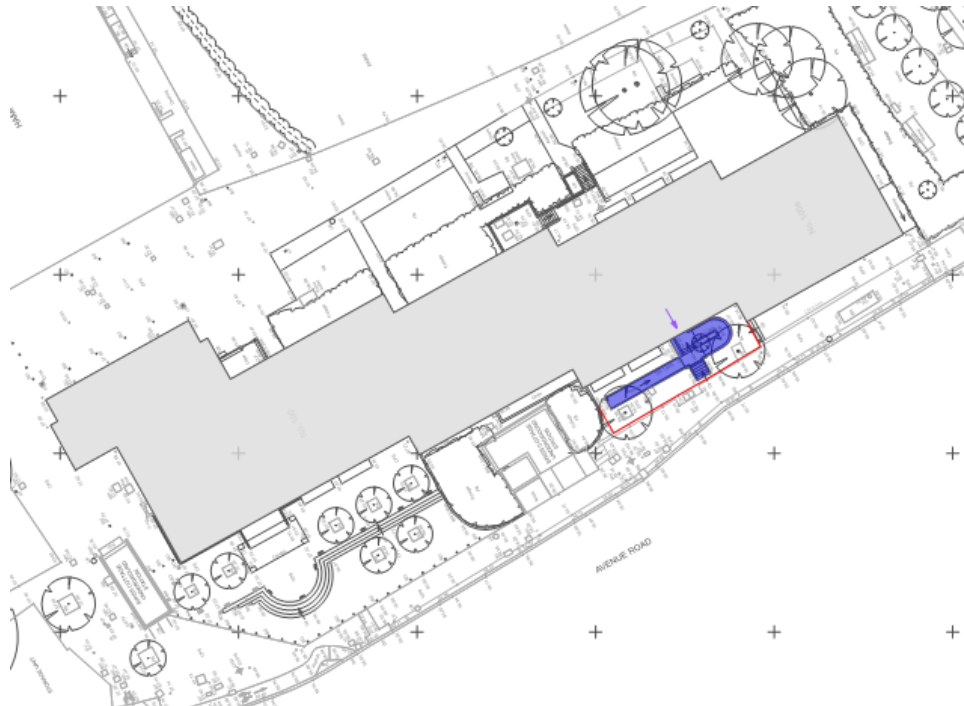
### 1.0 Proposal

1.1 A Certificate of lawfulness existing use or development (CLEUD) has been submitted under Section 191 of the Town and Country Planning Act 1990 (as amended) (the Act) to establish whether the commencement of planning permission 2014/1617/P (allowed under appeal ref: APP/X5210/W/14/3001616 dated 18/02/2016) has occurred. This is in accordance with condition 1 of the Planning Inspectorate's decision, listed within Annex A – List of Proposed Conditions, which states:

*'1. The works hereby permitted shall be begun not later than the end of three years from the date of this consent.'*

1.2 The application is made on the basis that works to demolish a part of the existing building, which constitute a 'material operation' under section 56(4) of the Act, have resulted in the development commencing. Planning permissions may be kept alive indefinitely (i.e. remain legally extant and capable of full implementation) if works or actions to implement them have commenced.

1.3 The demolition works have been undertaken to a ramp and stairs to the front of the existing building. The external entrance ramp and steps fronted Avenue Road, to the southeast of the Swiss Cottage Underground Station. The demolition works are shown on drawing number LL443-275-0015 dated 11.12.2017. A section of this plan is copied below, with the area that was demolished highlighted in purple with a red line around part of it. The works of demolition are clearly consistent with the demolition drawings approved under the associated planning permission (2014/1617/P).



**Figure 1 (above):** Site plan showing the demolition works undertaken at the site

1.4 The Secretary of State has advised local planning authorities that the burden of proof in

applications for a Certificate of lawfulness is firmly with the applicant. The relevant test is the 'balance of probability', and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's case, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the granting of a certificate. The planning merits (i.e. planning policy) of the use or development are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application. In addition, legislation other than planning statute (i.e. Building Regulations, Health and Safety, Accessibility etc.) is not relevant to the assessment. The key point for consideration is whether the works that have taken place on-site are lawful because they constitute a material operation sufficient to have lawfully implemented the planning permission. This is a legal interpretation of the Act.

## **2.0 Applicant's Evidence**

2.1 The applicant has submitted the following information in support of the application:

- Application form
- Cover letter dated 13/12/2017 from WYG
- Site location plan (Scale 1:1250)
- Approved drawings from planning permission 2014/1617/P
- General Arrangement - Demolition Works Plan 2017 (drawing no. LL443-275-0015)
- Demolition contract and cover letter with Matthews (Sussex) Limited
- Demolition notice letter (application ref: 17/D/09976) dated 24/12/2017 from Carol Little in Camden Building Control
- Demolitions Notice (The Building Act 1984: Section 80) - Ref. 21089717 from Contact Camden
- Community Infrastructure Levy (CIL) Form 6: Commencement Notice
- Photographs of the demolition works – including pre-demolition, during demolition and post-demolition
- Counsel advice from Rupert Warren QC dated 06/12/2017
- Letter from Barry Coltrini at Essential Living dated 11/12/2017, confirming that the demolition works have been completed
- Letter outlining parties with ownership interest in the land and confirming that they were reserved requisite notice under the Building Act

2.2 The applicant's case is that demolition has been lawfully undertaken (i.e. removal of steps and a ramp) in accordance with planning permission 2014/1617/P, and those works were a material operation for commencement of planning permission 2014/1617/P in accordance with condition 1 (they were commenced before 18 February 2019). They consider that the material operations are in accordance with the planning permission and the conditions attached to it (in particular the approved plans/drawings). The applicant also confirms that the pre-commencement (demolition) planning conditions, including 21 (details of tree protection) and 24 (details of air quality monitors), have been discharged. It is confirmed in the applicant's cover letter that there were no trees in the demolition area that require protection and that two real time particulate air quality monitors were installed prior to the development taking place. Other pre-commencement conditions are not considered by the applicant to be relevant to the demolition works.



2.3 Evidence has been submitted to demonstrate that the demolition works took place. This includes a demolition contract with Matthews (Sussex) Limited (an experienced demolition contractor), details of a Demolitions Notice with Camden's Building Control and photographs showing the works. The applicant submitted a CIL commencement notice before the demolition took place as required under the CIL Regulations (2010) (as amended).

2.4 Legal advice from Rupert Warren QC states that:

- The pre-commencement stipulations within the permission and S106 have been satisfied, insofar as they would have precluded a lawful start on-site by the demolition works
- The Courts state that a 'material operation', as defined under section 56 of the Act, must be securely referable to the scheme which is the subject of the permission. The submitted legal opinion is in no doubt that the demolition works are sufficient to be a 'material operation' and fall within the approved drawings and the description of development
- Pre-commencement (demolition) conditions have been discharged and requisite notices under the Building Act would be required (**Officer comment: the conditions have been discharged and a Demolition Notice was obtained**)
- The demolition would commence the permission

### 3.0 The Council's Evidence

3.1 Camden Building Control received a Demolition notice on 10/11/2017 (ref: 17/D09976) for 'Demolition of an external staircase and ramp'. Building Control served a notice about the demolition works on 24 November 2017, addressed to 'Matthews Demolition, Matthews Group, Stephenson Place, Stephenson Way, Three Bridges, Crawley, West Sussex, RH10 1TL. The Building Control department visited the site on 08/01/2018 and have confirmed that the demolition of the stair and ramp has been completed.

3.2 A demand CIL notice was served on the applicant on 04/12/2017, confirming that an outstanding CIL amount of £5,264,355.27 is payable, with £580,444.84 going to Transport for London (the Mayor). The first of five instalments of £500,000 was paid on 03/02/2018. Four more payments of £1,191,088.82 are required in June 2018, November 2018, May 2019 and September 2020. The Council issued the demand notice as a valid commencement notice has been received from the applicant.

3.3 The Council sought an independent legal opinion from Morag Ellis QC, who has extensive experience within planning and related public law areas in England and Wales, was called to the Bar in 1984 and took silk (i.e. became a QC) in 2006. Morag concludes in her opinion that the CLEUD should be granted. A summary of her view is included below:

- The removal of the entrance steps and ramp at the front, which were fairly substantial, constitutes a 'work of demolition of a building' within section 56(4)(aa) of the Act. It is noted that section 336(1) of the Act defines 'building' as including 'any part of a building'
- Demolition of the existing building is included in the description of development and demolition is expressly excluded from the phrase 'development works' in a number of planning conditions. This makes it clear that demolition is regarded to be part of the development
- Demolition of buildings is included within the definition of 'development' under section 55 of the Act
- Permitted development rights have been modified to be subject to prior approval notification. In this case, where demolition is expressly authorised by the planning permission, a prior approval application would not be expected

- It would be unlawful to take enforcement action against the applicant in this case and breaches of conditions contained in the S106 do not come within the statutory definition of 'enforcement action'. S106 matters are separate from development control and are dealt with either as a matter of simple contract law and/or under the separate enforcement provisions within section 106 of the Act

#### 4.0 Assessment

4.1 Provision is made in section 56 of the Act that development may be taken as begun when a 'material operation' begins to be carried out. The relevant parts of section 56 are copied below:

*'56 Time when development begun.*

*(1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—*

*(a) if the development consists of the carrying out of operations, at the time when those operations are begun;.....'*

*'....(2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.....*

*'....(4) In subsection (2) "material operation" means—*

- *any work of construction in the course of the erection of a building;*
  - (aa) any work of demolition of a building;.....*

4.2 The works undertaken by the applicant include the demolition of stairs and a ramp to the front of the building. Evidence has been submitted, which has been verified by Building Control, that the works have been completed in accordance with the requisite requirements under the Building Act. Officers (as well as the Council's own and external legal advice) consider that the works constitute a 'material operation' under section 56 of the Act, as they include 'any work of demolition of a building'. It is noted that the scale of the demolition works or how they compare to the proportion of the total demolition does not dictate whether the works constitute a material operation. What makes the demolition a material operation in this instance is that the works are required as part of the substantial works and are associated with the planning permission. In this case there is no doubt that the stairs and ramp will need to be removed to implement the approved development and the demolition is included on the approved drawings. The works are therefore within the scope of the permission. The Act can be interpreted to include that any work, even relatively insignificant, can be deemed a material operation. Case law suggests that internal strip-out, the digging of a trench and other relatively minor works can constitute the implementation of planning consent. For example, it has been found in some circumstances that even marking out the line and width of a road with pegs amounted to an 'operation' for commencement.

4.3 Furthermore, the demolition is considered to constitute development under section 55 of the Act. This is because development means the carrying out of 'building operations' (or engineering, mining or other operations), which includes demolition of buildings. The relevant parts of section 55 are copied below:

*'55 Meaning of "development" and "new development"'*

- *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.

1A) For the purposes of this Act “ building operations ” includes—

(a) demolition of buildings;’

4.4 Due to the above, officers consider that a material operation has occurred that is considered to be development (as defined by the Act). The description of development for 2014/1617/P states **(emphasis added)**:

*‘Demolition of existing building and redevelopment for a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (Class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (Classes A1/A2/A3) inclusive of part sui generis floorspace for potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (class D1) with associated works including enlargement of existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements.’*

4.5 A number of planning conditions on the decision notice for 2014/1617/P dated 18/02/2016, including conditions 4 (highway levels); 15 (micro climate measures); 18 (materials and details) and 21 (tree protection), specifically refer to demolition. The references within the wording of the condition verifies that demolition constitutes part of the approved development. Condition 4; 15 and 18 state that *‘Development works (other than demolition) shall not take place’*.

4.6 Based on the description of the development and wording of the above mentioned planning conditions, it is clear that demolition is included as part of the development. The demolition works are in accordance with the approved demolition drawings. On this basis, the ‘material operation’ and ‘development’ that has occurred, in accordance with the Act, is considered to be in relation to the works that were permitted under 2014/1617/P. Works on the permission to commence the development have therefore commenced lawfully.

4.7 The decision notice under 2014/1617/P includes 33 planning conditions, many of which require details to be submitted to the Council at various stages of the development (i.e. prior to demolition, pre-construction, prior to the relevant element of works or before the occupation of the scheme). Five of the conditions, 14.1 (contamination); 21 (tree protection); 24 (air quality monitors); 27 (u-values and thermal bridging) and 31 (outline method statement), require details prior to any development works (i.e. including demolition). These conditions have been formally discharged by the Council. The relevant reference numbers are below (also included under relevant history (above)):

- **2017/5859/P** - Details of condition 14(1) (land contamination survey and lab results) – Granted on 12/12/2017
- **2016/2352/P** - Details of condition 21 (tree protection) – Granted on 27/06/2016
- **2016/1893/P** - Details of condition 24 (air quality monitoring) – Granted on 27/06/2016
- **2017/3139/P** - Details of condition 27 (u-values and approach to thermal bridging) - Granted on 17/07/2017
- **2016/6699/P** - Details of Condition 31 (outline method statement) – Granted on 20/06/2017

4.8 Of the above conditions - remediation works under condition 14 (2) would not be required for the level of demolition undertaken; there are no trees to be protected within the area that the demolition took place (condition 21); two air quality monitors are in place in accordance with condition 24; the details of condition 27 will be required in the construction of the new building and the development that has been undertaken to date (i.e. demolition to the stairs and ramp) does not include foundations,

piling or any new structures. On this basis, the works are not considered to be in breach of any of planning conditions.

4.9 The planning permission under 2014/1617/P is subject to a S106 agreed on 24/08/2015. The S106 includes a number of clauses such as affordable housing, community facility space, a Construction Management Plan (CMP), disabled parking, energy and sustainability, public open space, landscaping, Service Management Plan (SMP), travel plan and car free. Some of the clauses require the applicant to submit information for the approval of the Council on or prior to implementation. Most notably this includes the CMP, which requires details of the development (including the substantial demolition of the existing building and the construction of the new buildings). A draft CMP has been submitted to the Council and is currently being considered under 2017/6638/CMP.

4.10 As stated in the legal opinion of Morag Ellis QC, breaches of obligations within the S106 do not come within the statutory definition of 'enforcement action' under section 171A of the Act. An enforcement warning notice or a breach of condition notice may only be served if development is carried out without the required planning permission or without complying with any condition or limitation subject to which planning permission was granted. The demolition works form part of the permission and due to the nature of the development undertaken, would not be in breach of any planning conditions or limitations in isolation. Furthermore, the legal opinion states that S106 matters are separate from development control and are dealt with either as a matter of simple contract law and/or under the separate enforcement provisions of section 106 of the Act.

4.11 Officers (as well as the Council's own and external legal advice) consider that the level of works undertaken would not breach any of the legal obligations. In terms of the CMP, the demolition works were undertaken within a day and had a minimal impact (if any) on residential amenity or highway safety/accessibility. The works were limited to a small area that was surrounded by hoarding. This scope of works would not require a CMP in its own right.

4.12 All the planning conditions and S106 obligations remain binding and enforceable and will need to be complied with as the development proceeds. No further works (i.e. the substantial demolition of the existing buildings) would be able to lawfully continue without the draft CMP being formally discharged. This applies to the other pre-commencement planning conditions and legal obligations. Relevant Building Notices and licences also need to be granted (this includes highways licences, hoarding licences, open space/park licences etc.) before works can continue.

4.13 A CIL commencement notice was submitted by the applicant before the demolition took place. Subsequently, the Council has served a demand CIL notice to acknowledge that the development has commenced. This is a requirement when development commences so the serving of the notices and the subsequent payments provide further justification that the development has commenced and the applicant intends to fully implement the development. The CMP is currently being considered and subject to it being discharged, the applicant intends to commence works to substantially demolish the building in late summer/early spring.

4.14 Based on the submitted evidence and the above justification, it is considered that the development has commenced in accordance with condition 1 of 2014/1617/P dated 18/02/2016. Therefore, the CLEUD application is recommended to be granted.

## **5.0 Conclusion**

5.1 In summary, the development approved under 2014/1617/P is considered to have commenced in accordance with condition 1 for the following reasons:

- The demolition works (to a stair and ramp) are considered to be a 'material operation' under section 56 of the Act as they constitute 'any work of demolition of a building'
- Those demolition works were undertaken before 18 February 2019 as required by condition 1

- The demolition is considered to constitute development under section 55 of the Act. Development is defined as the carrying out of 'building operations' (or engineering, mining or other operations), including demolition of buildings
- Demolition is included as part of the development under 2014/1617/P, as referenced in the description of the development, the planning drawings and several planning conditions. Officers are satisfied that the demolition works were undertaken for the purpose of carrying out the development approved by the planning permission and constituted a lawful commencement of that development
- The pre-demolition planning conditions have been discharged and implemented where necessary
- Breaches of obligations within the S106 do not come within the statutory definition of 'enforcement action' under section 171A of the Act. In addition, S106 matters are separate from development control and are dealt with either as a matter of simple contract law and/or under the separate enforcement provisions of section 106 of the Act
- The demolition works undertaken would not breach any of the legal obligations. In particular, the scope of works would not require a CMP in its own right
- All the planning conditions and legal obligations will have to be regarded to as part of the development. No further works (i.e. the substantial demolition of the existing buildings) can lawfully continue without the draft CMP (and other planning, Building Control and legal requirements) being formally discharged
- A CIL commencement notice was submitted by the applicant and the Council has served a demand CIL notice, indicating the development has commenced and the intention of the developer to fully implement the scheme

5.2 For these reasons, it is considered that the applicant has undertaken lawful works in compliance with condition 1 of 2014/1617/P dated 18/02/2016.

**6.0 Recommendation:** Grant Certificate of Lawfulness (Existing)