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2 February 2023

Our ref ROGN/Tavis House

Dear London Borough of Camden,

Tavis House, 1-6 Tavistock Square, London, WC1H 9NA (the Property)
Proposed Application for Prior Approval (the Proposed Application)

We act for Tempus Realty Holdings 1 (Jersey) Ltd (**Tempus**), the long leasehold owner of the Property.

Tempus has received the enclosed developer's notice dated 19 January 2023 (the **Developer's Notice**) from Clarke Telecom Ltd for an on behalf of Cornerstone (the **Developer**) giving notice of their purported intention to rely on Part 16 of Schedule 2 (the **PD Right**) to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the **GPDO**) for the installation of a telecommunications base station comprising the installation of 6 no antennas, 2 no dishes, 1 no Eltek Power Supply cabinet and proposed 2 no Flatpack frames together with ancillary development (the **Proposed Development**).

The Developer's Notice confirms that the Developer intends to submit the Proposed Application for confirmation as to whether the Council's prior approval is required for the Proposed Development.

We are writing to bring to your attention that the PD Right does not apply to the Proposed Development and that it would be unlawful for the:

1. Proposed Development to be carried out in purported reliance on the PD Right; and
2. Council to allow for deemed approval to be given, or grant prior approval pursuant to the GPDO, and that either action would be open to legal challenge.

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The Proposed Development requires express planning permission pursuant to an application. Therefore, we request that the Council confirms this to the Developer and refuses to entertain the Proposed Application.

We set out below our reasons why the PD Right does not apply.

Unlawfulness of the Proposed Application and the Proposed Development

The PD Right only applies to development: “*in, on, over or under land controlled by that operator or in accordance with the electronic communications code*”. The:

1. land is not controlled by the Developer; and
2. Proposed Development would not be in accordance with the electronic communications code (the **Code**). This is because no agreement is currently in place with the Developer and Tempus will not enter into any such agreement with the Developer. In addition, the Developer will not be able to satisfy the requirements necessary to obtain an agreement from the Court conferring rights under the Code. Under Paragraph 21(5) of the Code, the Court cannot make an order imposing an agreement against Tempus if it thinks that Tempus:
 - a. intends to redevelop all or part of the land to which the Code rights under that agreement would relate to (or any neighbouring land); and
 - b. could not reasonably do so if such an order were made.

Tempus does intend to redevelop the land to which the Proposed Application relates. Tempus submitted a planning application (ref: 2021/6105/P) (the **Rooftop Application**) for the development of the Property on 14 December 2021 and the Council has resolved to grant permission conditionally subject to the conclusion of a legal agreement. The Rooftop Application would permit the refurbishment and extension of the existing building to provide new entrances, a new roof top pavilion, roof top plant equipment and enclosures, rear extension and cycle parking associated with Class E use together with new hard and soft landscaping and other ancillary works (the **Rooftop Development**). The Proposed Development is incompatible with the Rooftop Development, and once the planning permission pursuant to the Rooftop Application is granted the Rooftop Development would also be contrary to the proposed planning conditions (see proposed condition 4).

Therefore, the fact that Tempus will not grant an agreement coupled with the fact that the Proposed Development will not be in accordance with the Code (on the basis that a Court will not impose an agreement on Tempus given its intention to carry out the Rooftop Development) means that the PD Right does not apply as the Proposed Development is not in accordance with the Code.

As a matter of law, the Council is bound to consider whether the Proposed Development falls within the scope of the GPDO and the PD Right.

In Paragraph 19 of the Court of Appeal’s decision in *New World Payphones Ltd v Westminster City Council and another* [2019] EWCA Civ 2250 the Court of Appeal stated that: “*Where development does not satisfy the class definition and conditions so as to fall within a class of permitted development, then the GPDO*

does not apply". In such circumstances, it is not lawful to grant prior approval. As demonstrated above, the Proposed Development does not satisfy the class definition.

Where the Proposed Development does not fall within the scope of the GPDO and PD Right, then the Proposed Application must be refused. Please see attached the recent planning appeal decision (ref: APP/X5210/W/21/3279455) dated 3 March 2022 upholding the Council's refusal of another application to rely on the PD Rights, on which we acted for the successful objector, which confirms this principle and where the Inspector concluded that the development was not permitted by the PD Right and dismissed the appeal.

The Developer must therefore apply for planning permission for operational development. No application has been made by the Developer.

It would be irrational and unlawful for the Council to grant such a prior approval and any decision would be open to legal challenge. Equally, if the Developer sought to rely on the PD Right, the Proposed Development would be unlawful and open to enforcement action.

It is also the case that prior approval cannot be deemed in respect of the Proposed Development, as would ordinarily be possible under part 16 of Schedule 2 to the GPDO if the Council did not respond to the Developer. This demonstrates the importance of the Council refusing to determine the Proposed Application, otherwise the Council will have been complicit in the purported grant of a planning permission for development that has been excluded from the GPDO and which could not be lawfully implemented as result of the GPDO.

We therefore request that the Council confirms by return that it agrees that the GPDO does not apply to the Proposed and that it will confirm this to the Developer.

Our client reserves its right to seek an injunction in respect of the Proposed Development, and to judicially review any decision of the Council, if it becomes necessary.

Ancillary Development – Outside PD Right

In addition, and without prejudice to what we have already set out, the Proposed Development is stated as including non-specific "*ancillary*" development which, from the plans, appears to include a number of concrete plinths, handrails and access ladders. These elements of the Proposed Development are outside of the scope of the PD Right, and so prior approval cannot lawfully be given for these elements of the Proposed Development upon which the remainder of the Proposed Development would be sited and developed with. Express planning permission would always be required for this operational development.

As the PD Right does not extend to this operational development, and as this operational development does not currently exist, the Proposed Development cannot lawfully be sited as shown on the plans because it is proposed to be sited on something alongside operational development that does not exist, is not permitted by the PD Right and does not have the benefit of planning permission. To that extent, any Proposed Application would also be premature and could not be determined.

Developer's Notice Deficiencies

In addition to the above legal bars to reliance on the PD Right, the Developer's Notice is not legally compliant with the requirements of the GPDO in any event. This is because:

1. it is served pursuant to Town and Country Planning (General Permitted Development) (England) Order 2016 (Amendment)(No.2) Order 2016. This is not the correct legislation; and
2. it states that the application and accompanying plans are available for public inspection at the offices of the Council, but the application does not appear to have been made (and is not noted on the Council's planning portal);

Ordinarily, we would request that the Developer's Notice is reissued in a legally compliant form but given that the PD Right does not apply to the Proposed Development this is unnecessary as it would not achieve anything. If the Council considers that it can lawfully entertain the Proposed Application, then the Developer's Notice must be reissued and the timeframe for redetermination of the Proposed Application must be re-set.

Next Steps

We request that the Council confirms by return that it agrees that the GPDO does not apply to the Proposed and that it will confirm this to the Developer. The Council should proceed to refuse to entertain the Proposed Application.

We also reserve Tempus' position, without prejudice to our position that the PD Right does not apply, to make further representations once the Proposed Application is submitted should the Council proceed to entertain the Proposed Application. It is not possible to make comments at this stage, as the Developer has not provided a draft suite of application documents which must accompany any Proposed Application.

The Developer is free to submit an application for planning permission.

Yours faithfully

A black rectangular box redacting the signature of the sender.

CMS Cameron McKenna Nabarro Olswang LLP

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