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Our ref: U0010696/Applications and Decisions/CLEUD

Your ref: PP-12508910

6 October 2023

Dear Madam,

Town and Country Planning Act 1990 (as amended)

Lethaby Building, Former Cochrane Theatre, 12-42 Southampton Row and 1-4 Red Lion Square (Former University of Westminster Central St Martins College Campus) London, WC1B

Application for Certificate of Lawfulness of Existing Use

On behalf of our client, Globalgem Hotels Limited (the Applicant) we enclose an application for the Certificate of Lawfulness of an Existing Use or Development (CLEUD) in respect of the Former University of Westminster Central St Martins College Campus site in Holborn.

The application is submitted under Section 191 of the Town and Country Planning Act 1990, as amended, and Section 39 of the Town and Country Planning (Development Management Procedure) Order 2015, as amended.

The certificate is submitted to seek confirmation that planning application reference 2020/2470/P has been lawfully implemented. This letter and supporting documentation provide evidence to demonstrate that the Applicant, via their contractor JRL Demolition has implemented planning application reference 2020/2470/P through the demolition of the single storey building within the courtyard of the existing site.

The ruling of *Gabbitts v Secretary of State for the Environment* (1985) states that the relevant test of the evidence on such matters is 'the balance of probability'. The ruling also confirms that the Applicant's own evidence is not required to be corroborated by independent evidence. The Applicant's evidence needs to be sufficiently precise and unambiguous to justify the grant of the certificate on the balance of probability. The relevant test of the evidence is therefore the balance of probability.

Lawful Implementation of the Permission

The relevant tests to establish whether or not a material operation has commenced to implement a planning permission are twofold:

- i. Has the work been done in accordance with the relevant planning permission?
- ii. Is the work undertaken more than de minimis?

These tests are well established in planning case law.

Section 56(4) of the Town and Country Planning Act 1990 ('the Act') defines works that constitute a material operation for the purposes of the implementation of a planning permission.

In respect of establishing that the scope of works qualifies as a material operation, Section 56(2) of the Act makes it clear that 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.

Thus, provided that any applicable conditions have been satisfied, it follows that the carrying out of a material operation is sufficient to begin development and thereby lawfully implement a planning permission for the purposes of the Act.

Section 56(4) of the Act confirms that the phrase 'material operation' means:

- “(a) any work of construction in the course of the erection of a building;
 (aa) and work of demolition of a building;
 (b) the digging of a trench which is to contain the 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 a material development.”**

Site and Surroundings

The site is located in Holborn and comprises Lethaby Building, Former Cochrane Theatre, 12-42 Southampton Row and 1-4 Red Lion Square (Former University of Westminster Central St Martins College Campus).

Planning History

Planning permission and Listed Building Consent was approved under references 2020/2470/P and 2020/2481/L. Both applications were approved on 30 October 2020. Both applications required the approval of a number of conditions requiring approval prior to any demolition works or development. The following conditions have been discharged:

Planning Condition Number		
11	Written Scheme of Investigation	Approved under reference 2022/0909/P and 2021/3965/P
17a	Detailed design and construction of structures, foundations and basement	Approved under reference 2021/5848/P

18	Method Statement relating to Crossrail	Approved under reference 2021/5848/P
36	Air Quality monitoring	Approved under reference 2021/5847/P
Listed Building Consent		
5	Programme to secure interior features against loss or damage during building works	Approved under reference 2021/2590/L

In addition, the following S106 planning obligations have been formally discharged:

- Demolition Management Plan
- Construction Management Plan Bond
- Levels Plan
- Employment and Training Plan
- Employment and Training contribution
- Highways contribution

The Planning (Listed Buildings and Conservation Areas) Act 1990 does not include a mechanism for obtaining a certificate of lawfulness to confirm listed building consent works have been lawfully implemented. Case law *Government of the Republic of France v. Royal Borough of Kensington and Chelsea* [2017 EWCA] established that Section 26H of the Planning (Listed Buildings and Conservation Areas) Act 1990 can only be used to certify that works to a listed building are “lawful” in the sense identified in section 26H(2), i.e. that they do not affect the character of the listed building as a building of special architectural or historic interest. It is therefore not possible to use section 26H to certify that a listed building consent has been implemented and therefore remains extant.

That same case also confirmed that the definition of implementation of a listed building consent is, essentially, the same as that for a planning permission under s56 TCPA 1990.

The documents submitted in support of this application also confirms that Listed Building Consent reference 2020/2481/L has been implemented in accordance with the approved plans, on the basis that the Listed Building Consent description refers to the main works proposed under the planning application which for the avoidance of doubt has been highlighted in bold below:

External refurbishment and restoration including window repair/replacement and installation of secondary glazing, façade stone repairs, repair and reinstatement of roof form, new lift overruns and installation of 2no. skylights. Internal refurbishment and repair of stair cores, demolition of existing lift shaft, refurbishment and amendments to doors and openings, installation of new mechanical ventilation and service routes, installation of new riser access, removal of modern partitions and installation of new partitions, refurbishment and waterproofing of vaults and other associated works. **Works in association with conversion of the Lethaby Building into a hotel (Use Class C1), with flexible ground floor and basement uses (retail/restaurant/drinking establishment (Use Class A1/A3/A4), office (Use Class B1), exhibition and lecture halls (Use Class D1/D2), along with works to the wider site including erection of standalone block comprising a cultural use (Use Class D1) at ground and first floor level with affordable residential housing (Use Class C3) above with provision of balconies, terraces and a roof terrace. Re-**

instatement of former Orange Street, together with highway improvements, public realm, landscaping, cycling parking, bin storage and other associated works. Works in association with conversion of the Lethaby Building into a hotel (Use Class C1), with flexible ground floor and basement uses (retail/restaurant/drinking establishment (Use Class A1/A3/A4), office (Use Class B1), exhibition and lecture halls (Use Class D1/D2), along with works to the wider site including erection of standalone block comprising a cultural use (Use Class D1) at ground and first floor level with affordable residential housing (Use Class C3) above with provision of balconies, terraces and a roof terrace. Re-instatement of former Orange Street, together with highway improvements, public realm, landscaping, cycling parking, bin storage and other associated works.

The statutory declaration submitted by JRL Demolition (Enclosure 2) explains that the single storey building was demolished in August/September 2023 to lawfully implement the planning permission.

Supporting Documents

Alongside this covering letter, we enclose the following documents in support of this application:

- Completed Application form and certificates
- Site Location Plan
- Enclosure 1 – Decision notice for planning permission reference 2020/2470/P
- Enclosure 2 – Statutory Declaration prepared by JRL Demolition

The application fee is £234 (plus £64) has been paid online using the Planning Portal.

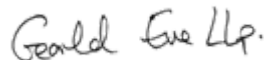
Summary

This application seeks the confirmation that planning application reference 2020/2470/P has been lawfully implemented. The evidence submitted demonstrates, in line with statutory framework concerning “lawfulness” for lawful development certificates as set out in the Town and Country Planning Act 1990 (“the 1990 Act”), that the Site has been lawfully implemented. We would appreciate written confirmation that the Listed Building Consent has also been implemented.

We trust that you have everything required to proceed with validation and looking forward to receiving the Certificate at the earliest opportunity.

Should you have any queries, please contact Rebecca Taylor or Natalie Davies at the above address.

Yours faithfully



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Enclosure I

Decision Notice 2020/2470/P

Enclosure 2

Statutory Declaration