

Delegated Report		Analysis sheet	Expiry Date:	01/11/2023
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Alex Kresovic			2023/3709/P	
Application Address			Drawing Numbers	
7A, B, C Bayham Street London NW1 0EY			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Commencement of development in accordance with condition 1 of planning permission reference 2018/3647/P dated 28 August 2020, as amended by 2020/5647/P dated 19 January 2022 for variation of conditions 2 (approved plans), 5 (waste storage), 9 (SUDs), 14 (green roofs and living walls), 24 (bird and bat boxes) and removal of conditions 11 (CHP), 12 (CHP stack) and 16 (greywater recycling) of planning permission 2018/3647/P dated 28/08/2020 (Demolition of existing office buildings (B1) and erection of 5 storey (plus two storey basement) building comprising mixed office (B1) and hotel (C1) use).				
Recommendation(s):	Grant Certificate of Lawfulness (Existing)			
Application Type:	Certificate of Lawfulness (Existing)			
Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				

Site Description

The Site currently comprises a construction site fronting Bayham Street which is in the midst of erecting the granted planning permission for the demolition of existing office buildings (B1) and erection of 5 storey (plus two storey basement) building comprising mixed office (B1) and hotel (C1) use.

The site previously was industrial in character and appearance and was occupied by three small commercial buildings at 7a, 7b and 7c Bayham Street, which were all in office (B1) use.

The site is located within Sub Area 1 of the Camden Town Conservation Area and the previous buildings were identified in the Camden Town Conservation Area Plan as making a neutral contribution to the character of the area.

Relevant History

APPLICATION SITE:

2020/5647/P: Variation of conditions 2 (approved plans), 5 (waste storage), 9 (SUDs), 14 (green roofs and living walls), 24 (bird and bat boxes) and removal of conditions 11 (CHP), 12 (CHP stack) and 16 (greywater recycling) of planning permission 2018/3647/P dated 28/08/2020 (Demolition of existing office buildings (B1) and erection of 5 storey (plus two storey basement) building comprising mixed office (B1) and hotel (C1) use). **Granted on 19 January 2022.**

2018/3647/P: Demolition of existing office buildings (B1) and erection of 5 storey (plus two storey basement) building comprising mixed office (B1) and hotel (C1) use. **Granted on 28 August 2020.**

EN11/0104: The erection of 2x advertisement hoarding on the front elevation of bridge structure and adjoining site. Discontinuance Notice dated 13/02/2013. **Appeal allowed; discontinuance notice quashed 26/11/2013.**

Assessment

Background

The certificate seeks to demonstrate that on the balance of probability that planning permission ref: 2018/3647/P dated 28 August 2020, as amended by 2020/5647/P dated 19 January 2022, was implemented in line with the attached conditions and the definitions of development outlined within the Town and Country Planning Act 1990. They therefore seek to confirm that the permission remains extant and that the carrying out of the balance of the operational works permitted would therefore not require further express consent. This permission would have expired on the 28th of August 2023.

To satisfy the above, the applicant is required to demonstrate, on balance of probability that the previous permission was implemented in line with any pre-commencement conditions and planning obligations, prior to the expiry date of the planning permission 2018/3647/P, as amended by 2020/5647/P.

Applicant's Evidence

1. All consented drawings (existing and proposed)
2. Discharge notices of s106 obligations and discharge of planning conditions
3. Community Infrastructure Levy (CIL) Notices
4. Building Contract between Camden Lifestyle (UK) Ltd and Wring Group Limited dated 18 October 2021.
5. Project Progress Report prepared by Wring Group Ltd, dated 10 May 2022, 28 June 2022, and 25 January 2023.
6. Photos of the Site prior to works commencing.
7. Photos of the Site following demolition.

Council's evidence

It is noted that all pre-commencement conditions were discharged under refs 2022/0212/P, 2022/0263/P, 2022/0210/P, 2020/4197/P, and 2022/0211/P. The Council is satisfied that there are no further conditions which are required to be discharged prior to the commencement of the works.

A Section 106 legal agreement was secured which included the following pre-commencement planning obligations: Highways Contribution, Apprentice Support Contribution, Affordable Housing Contribution, Environmental Improvements Contribution, Approval in Principle Contributions, Travel Plan Monitoring Contribution, Construction Implementation Contribution, Viability Assessment Fee, and Employment and Training Contribution. All remaining s106 pre-commencement planning obligations have been satisfied. It is noted, the remaining Section 106 obligations are currently ongoing and are required before occupation.

Payment of the Community Infrastructure Levy (CIL) for the planning permission is required upon commencement of development. LB Camden has issued a letter confirming receipt of the commencement notice, and a demand notice requesting payment of the CIL. The full CIL liability was paid by the applicant on 04 July 2022.

It is therefore accepted that at this point the applicant had no outstanding pre-commencement requirements and would have been able to lawfully implement their permission.

Assessment

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 (Planning Practise Guidance para. 006), Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). 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 version of events, there is no good reason to refuse the application provided the applicant’s evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

The application was submitted on the 6th of September 2023 accompanied by the applicant’s evidence listed above.

The submission outlines that implementation works at the site commenced on the 3rd of May 2022 and comprised of a complete soft strip, demolition, and removal of all buildings on site including foundations. Evidence of these works was provided in the form of pre commencement / post completion photos, building contract, project progress report, and a practical completion certificate for the works.

Section 56 (2) of the Town and Country Planning Act 1990 outlines that:

“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”.

Section 56 (4) further clarifies that in subsection (2) “material operation means-

(a) any work of construction in the course of the erection of a building;

(aa) any 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 material development.”

The evidence submitted demonstrates that the complete soft strip, demolition, and removal of all buildings on site including foundations, as per planning permission 2018/3647/P, as amended by 2020/5647/P, commenced within the 3-year time period pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

As such, it is considered that the works constitute a material operation as defined in The Town and Country Planning Act 1990 as amended and are in connection with the implementation of the approved permission.

Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Conclusion

Recommendation: Grant Certificate.