

Planning Consultants



RAW/JW/DP4732  
4<sup>th</sup> October 2023

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**FAO: Sam Fitzpatrick**  
**Planning Department**  
**London Borough of Camden**  
**2<sup>nd</sup> Floor, 5 Pancras Square**  
**Town Hall**  
**WC1H 9JE**

Dear Sam,

**Mercure Hotel, 130 Southampton Row, WC1B 5AF**  
**Application for Certificate of Lawful Development**  
**Planning Application Ref. 2018/3876/P**

On behalf of Waverley House Hotel Limited (the 'Applicant'), we enclose an application to the London Borough of Camden for a Certificate of Lawfulness of Existing Use or Development at the Mercure Hotel, 130 Southampton Row (the 'Site').

This application is submitted to confirm that the below approved development has been lawfully implemented (hereafter referred to as the 'Existing Permission'):

*'Alterations and extensions to the existing building comprising a 7 storey side extension (from 1st to 7th floor levels) with a 5 storey rear extension (from 1st to 5th floor levels); erection of a roof extension and alterations to provide an additional storey; erection of 6 storey rear infill extension (from 1st to 6th floor levels); and two storey rear extension (5th and 6th floor levels) all in association with the creation of 18 additional bedrooms to the existing hotel'*

The following evidence is provided in support of this application:

- Earlier correspondence from the Applicant to the Council dated 1 February 2023;
- Condition 5 Decision Notice and Supporting Documents;
- Condition 9 Decision Notice and Supporting Documents;
- Condition 10 Decision Notice and Supporting Documents;
- Implementation Works Photographs dated 14.02.203; and
- London Building Control Confirmation of Inspection.



*The following statement is submitted in support of the application and we ask that it is read in conjunction with earlier correspondence issued to the Council on 1 February 2023 (copy also attached) which provides further details in addition to the background information set out below.*

### **Relevant Background**

The Existing Permission was granted on 28 February 2020, approximately one month before the Covid-19 global pandemic. The Existing Permission is subject to planning conditions and a section 106 agreement.

There are three conditions attached to the Existing Permission (Condition 5, Condition 9 and Condition 10) which as drafted stated that the submission and approval of details were required prior to the commencement of development.

Condition 1 on the Existing Permission requires that *"The development hereby permitted must be begun not later than the end of three years from the date of this permission."* Therefore the date by which the development was required to be commenced under the Existing Permission is 27th February 2023 (the "Expiration Date").

The section 106 agreement includes obligations expressed to be required to be satisfied prior to implementation of the consented development. These requirements require the submission of and approval of details in writing by the Council and the payment of financial contributions to the Council, in the form of payment of commuted sum contributions as a condition of the grant of planning permission – further details of which are summarised in the attached February 2023 correspondence. The performance of obligations under the section 106 agreement is not determinate of the lawful implementation of the Existing Permission. The Applicant intends to comply with those obligations and has been seeking the formal confirmation that the Council accepts that the Existing Permission has been implemented.

### **Implementation Works**

As proposed in correspondence in early February 2023, a scheme of works were carried out at the Property on 14<sup>th</sup> February 2023.

The works proposed to implement the Existing Permission comprises the demolition of internal walls, removal of a slab and the installation of a foundation detail. These works are defined on the plan in Appendix 1 and demonstrate works directly associated with the approved consent as shown on the approved plans.

We consider that these works amount to a material operation for the purpose of implementing the Existing Permission being works that are approved under the Existing Permission and being material in their nature and extent.

We attach the following information as evidence that these works took place on 14th February 2023:

- Implementation works photographs – recorded by Studio Moren; and
- Confirmation of Inspection – recorded by London Building Control Inspector.



### **Status of the Conditions Precedent**

The Applicant is of the view that Conditions 5, 9 and 10 do not meet the essential requirements of a true pre-condition for reasons that were set out in the February 2023 correspondence. For those reasons, we are of the view and invite the Council to accept that the requirement for the Council's approval of details submitted to discharge the first phase of these Conditions did not need to occur before the implementation works were carried out.

### **Conditions Discharge**

In any event and/or in the alternative, prior to the Expiration Date, relevant details in respect of each of the discharge of Conditions 5, 9 and 10 were submitted to the Council together with appropriate application details. Details of these conditions and of the applications that were submitted are detailed in the February 2023 correspondence as supplemented or further updated below.

Each of the first phase of Conditions 5, 9 and 10 have now been discharged by the Council and relevant discharge notices have been issued to the Applicant.

#### Condition 5 (Ref. 2023/0316/P)

This condition states:

*'Prior to the commencement of the development the detailed floorplans of 2 wheelchair accessible guest rooms shall be submitted to and approved in writing to the local authority. The extensions shall not be occupied until the accessible rooms have been provided.'*

To discharge this condition, the Applicant submitted detailed floorplans of two wheelchair accessible guest rooms to Camden on 23 January 2023. The details were approved on 7<sup>th</sup> June 2023.

#### Condition 9 (Ref. 2023/0318/P)

This condition states:

*'Prior to construction of the building a plan showing details of the biodiverse roof including species, planting density, substrate and a section at scale 1:20 showing that adequate depth is available in terms of the construction and long term viability of the green roof, and a programme for a scheme of maintenance shall be submitted to and approved in writing by the local planning authority. The biodiverse roof shall be fully provided in accordance with the approved details prior to first occupation and thereafter retained and maintained in accordance with the approved scheme of maintenance.'*

To discharge Condition 9, the Applicant submitted details on 23 January 2023. The details were approved on 11<sup>th</sup> May 2023.

#### Condition 10 (Ref. 2023/0493/P)

Condition 10 states that:



*'No development shall take place until full details of the air quality monitors have been submitted to and approved by local planning authority in writing. Such details shall include the location, number and specification of the monitors, including evidence of the fact that they have been installed in line with guidance outline in the GLA's Control of Dust and Emissions during Construction and Demolition Supplementary Planning Guidance and evidence has been submitted demonstrated that the monitoring have been in place for at least 3 months prior to the proposed implementation date. The monitors shall be retained and maintained on site for the duration of the development in accordance with the details thus approved.'*

To discharge this condition, the Applicant submitted an initial Dust Monitoring Report on 2 February 2023 which covered a 2-week period. The Council were advised of the Applicant's intended approach and the reasons for it in its February 2023 correspondence. At the Council's request, a revised Dust Monitoring Report was submitted to Camden on 3 July 2023 which included the air quality baseline period of 3-months. The condition was successfully discharged on 26 July 2023.

### **Assessment**

The relevant test for determining a certificate of lawful existing use or development is whether the Applicant in question has demonstrated, on the balance of probabilities, that planning permission has commenced lawfully.

In support of the Applicant's request, we invite the Council to give consideration and have regard to the following:

- The challenges facing the market, including the Applicant, arising from the delays associated with the pandemic;
- The Applicant carried out part of the development for which permission has been granted in advance of the Expiration Date and has provided demonstrable evidence of such event;
- The nature of Conditions 5, 9 and 10 are such that they do not amount to pre-conditions of the commencement of development under the Existing Permission;
- In any event, the Applicant has sought to engage promptly and constructively with the Council at all times and continues to do so.
- The Applicant supplied all relevant information available to it in order to discharge Conditions 5, 9 and 10 in advance of the Expiration Date;
- It has responded to its requests promptly and without delay and have provided further information upon request to assist the Council in reaching a determination of the first phase of Conditions 5, 9 and 10;
- There is legal precedent (such as the case of Whitely) for the proposition that the retrospective discharge of true conditions precedent has the effect of rectifying any breach of those conditions. This applies to the situation where works comprising development carried out pursuant to planning permission are carried out before all formalities (in this case the issue of a formal discharge notice) have been completed and that such formalities are subsequently secured retrospectively relating to the substance of those works or that permission. Certainly in such circumstances, there is no expediency in the Council taking any alternative action given that it essentially approves of the works carried out.



**Conclusion**

For the reasons outlined above in this letter in addition to the supplementary documents, we consider there is sufficient evidence to conclude that the Existing Permission was implemented lawfully. However, should you have any further queries please contact Jodane Walters or Richard Ward at this office.

Yours faithfully

*DP9 Ltd.*

**DP9 Ltd.**



**Appendix 1.** Implementation Works Photographs

studio  
moren

Mercure London Bloomsbury 14/02/2023, 10:03  
1450

Tuesday, 14 February 2023

Prepared For Fairview Hotels

7 Items Identified

John Harding  
Studio Moren



**Item 1**

Location Basement

Existing wall demolished as part of works



**Item 2**

Location Basement

Electrical items called up in preparation for relocation.





**Item 3**  
Location Basement  
Demolitions ongoing



**Item 4**  
Location Basement  
All largely demolished works  
ongoing



**Item 5**  
Location Basement  
Foundation works ongoing



**Item 6**  
Location Basement  
Area tamped



**Item 7**  
Location Basement  
Foundations started.



**Appendix 2 – London Building Control Confirmation of Inspection**

**From:** [REDACTED]  
**Sent:** 02 October 2023 10:32  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** 22/93327/MYCOXOA/CC Location: 130-134 Southampton Row London WC1B 5AF

Hi Bhasker,

Further to the request, please find below a copy of our site inspection records for your information. This has been forwarded solely to you as the requesting parties (Neil@) were not listed as an agent/client on our application. If you wish to allow other parties to be able to request inspection note copies, please email confirming they have permission with their email addresses. Feel free to forward as you wish.

**Note: This inspection report is restricted to requirements covered by Building Regulations current at that time. It does not constitute evidence that the Building Regulations have been satisfied until a Completion/Final Certificate has been issued for the project. It remains the responsibility of the person carrying out the work to ensure that the work complies with the Building Regulations. We do not replace or carry out the function of a Clerk of Works.**

Date	Time	Type	Inspected Date	Initials	Ref no	Applicant	Result	Decision
15-02-2023		Commencement	15-02-2023	CCO	22/93327/MYCOXOA/CC	Mr John Harding	Satisfactory	In Progress

**Location:** 130-134 Southampton Row, London, WC1B 5AF

**Notes:** 22/93327/MYCOXOA/CC - 130-134 Southampton Row, London, WC1B 5AF

1. Date of Visit : 15/02/
2. Weather conditions / temperature (where relevant to inspected works) : cloudy/dry
3. Property Status : Unoccupied
4. Type of visit: Commencement
5. Status of works: Satisfactory
6. File Reviewed : Yes
7. Site contact including name: General manager Greg Black

8. Site notes:

Met Greg on site. Works commenced to basement.

1no. non-load bearing wall removed.

1no. pad foundation excavated. Approx 1m x 1m wide x 750mm deep into ballast type ground.

Appears to be as per structural drawing forwarded for reference (slightly bigger).  
OK to pour concrete.

Next inspection - further foundations

Actions:

1. Full plans and structural drawings/calculations required when available

Kind regards,

**Adam L'Aimable** BSc(Hons), MRICS, MCABE C Build E

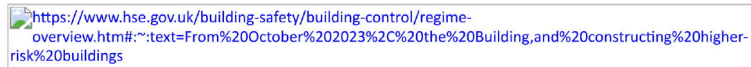
Director



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*Offsetting our Carbon Footprint - for every building control application we receive we have arranged through [Ecologi](#) for a tree to be planted to help offset our carbon footprint!*



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