

<b>LDC Report (Existing)</b>		<b>Application Number</b> 2023/5031/P	
<b>Officer</b> Fast Track - Geri		<b>Agreed Extension of Time</b> 07/02/2024	
<b>Application Address</b> Development At Former 72 To 86 Royal College Street NW1 0TH		<b>Authorised Officer Signature</b>	
<b>Conservation Area</b> N/A		<b>Article 4</b> Basements	
<b>Proposal</b> Confirmation that planning permission 2020/0728/P as amended by 2022/1566/P (dated 03/02/2021 and 24/08/2022) for "Demolition of existing buildings (Class B2); erection of 5 storey building (plus rooftop pavilions/plant and basement) to provide a mixed Class C2/D1 healthcare facility (Sui Generis)" were lawfully implemented by the carrying out of material operations prior to the expiry of the permission.			
<b>Recommendation: Grant</b>			
<p>The application site relates to a rectangular plot at land located on the eastern side of Royal College Street, close to the junction with Pratt Street.</p> <p>Planning permission was granted for application reference 2020/0728/P on 3<sup>rd</sup> February 2021 for the 'Demolition of existing buildings (Class B2); erection of 5 storey building (plus rooftop pavilions/plant and basement) to provide a mixed Class C2/D1 healthcare facility (Sui Generis).'</p> <p>Non-Material Amendments to planning permission 2020/0728/P was granted on 24<sup>th</sup> August 2022 (application reference 2022/1566/P) for the "increased extent of the basement, changes to front elevation screens, frame and entrance door, increased depth of main core, removal of rooflights, increased PV area and amendments to rear windows, including core lobby windows."</p> <p>This certificate of lawful development application seeks to demonstrate that works to implement permission 2020/0728/P as amended by 2022/1566/P have been undertaken.</p> <p><b>Applicant's Evidence</b></p> <p>The applicant argues that the application was implemented by the demolition and remediation that were completed in September 2021 in full compliance with the extant consent and has submitted the following evidence to demonstrate this:</p> <ul style="list-style-type: none"> <li>Existing Plans, Sections and Elevations</li> <li>Photographs (x 6)</li> </ul>			

- Section 106 Discharge Notice
- Construction/Demolition Management Plan dated February 2021 (x 36 pages)
- Covering Letter from DP9 (x 3 pages) dated 24<sup>th</sup> November 2023
- Demo pictures in progress and monitoring from Cushman & Wakefield (x 4 pages) dated 2<sup>nd</sup> July 2021, 9<sup>th</sup> July 2021, 16<sup>th</sup> July 2021 and 13<sup>th</sup> August 2021
- Plan of ground obstructions removed during demolition

## Assessment

Section 56(1) of the Town and Country Planning Act 1990 outlines that:

“Subject to the following provision of this section, for the purposes of this Act, development of land shall be taken to initiated:

- a) If the development consists of the carrying of operations at the time when those operations are begun.”

Section 56 (2) also outlines that:

“For the purposes of the provisions of this Part mentioned in subsection (3), development shall be taken to 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.”

## Planning conditions

The 2021 Planning Permission was granted subject to 23 numbered conditions. The conditions numbered 3, 4, 5, 8, 9, 10, 12, 13, 15, 16, 18, 19, 20, 21, 22 required details to be submitted and approved by the Council.

Condition 5 (hard and soft landscaping) (2023/0794/P) was granted on 19<sup>th</sup> April 2023.  
 Condition 8 (sustainable urban drainage system) (2021/1041/P) was granted on 23<sup>rd</sup> July 2021.  
 Condition 9 (mechanical ventilation) (2023/0796/P) was granted on 7<sup>th</sup> November 2023.  
 Condition 13 (land contamination) (2023/0797/P) was granted on 7<sup>th</sup> July 2023. *“However, in order to fully discharge the condition, we will require details of radon monitoring to be provided prior to occupation of the building.”*  
 Condition 16 (external noise levels) (2021/2718/P) was granted on 20<sup>th</sup> July 2021.  
 Condition 18 (biodiversity enhancements) (2023/0807/P) was granted on 4<sup>th</sup> August 2023.  
 Condition 19 (basement engineer) (2021/0851/P) was granted on 27<sup>th</sup> April 2021.  
 Condition 20 (green roof) (2023/0809/P) was granted on 18<sup>th</sup> October 2023.

Condition 22 (piling method statement) (2023/0811/P) was granted on 5<sup>th</sup> June 2023.

Conditions 3 (drawings, information or samples of materials for all external windows and doors), 4 (location, design and method of waste storage and removal), 10 (filtration system in the mechanical ventilation intake), 12 (plans showing the location and extent of photovoltaic cells), 15 (air-conditioning plant) and 21 (air source heat pumps) all required certain details to be submitted and approved by the Council "*prior to occupation of the site/building*" for conditions 4, 10 and 12, "*before the relevant part of the work is begun*" for condition 3, "*before the use commences*" for condition 15 and "*prior to commencement of above ground works*" for condition 21.

As mentioned above, in order to fully discharge condition 13, details of radon monitoring will need to be provided *prior to occupation of the building*. All of the conditions that were imposed on the planning consent 2020/0728/P which were required to be discharged prior to commencement of development have been discharged and details of these applications have been provided.

The pre-commencement planning obligations, that were attached to the permission 2020/0728/P and secured by Section 106 legal agreement, have also been discharged.

The submission outlines that implementation works at the site commenced prior to the expiration of the original planning permission. Sufficient evidence of these works has been provided as above, demonstrating that the demolition works took place. The submitted evidence is to the satisfaction of planning officers that a material operation as defined in The Town and Country Planning Act 1990 was carried out, which implements the planning permission in question.

The Council considers that the works carried out and evidence listed above demonstrate the works to implement the planning permission 2020/0728/P, as amended by 2022/1566/P have commenced.

#### Applicants submitted evidence

On the balance of probabilities, that the works relied upon in the application for the Lawful Development Certificate were carried out before 3<sup>rd</sup> February 2024. Specifically: all relevant pre-demolition conditions were discharged in Q1-Q2 of 2021; the demolition operations commenced in June 2021; and demolition and remediation were completed in September 2021. The following evidence, taken as a whole, shows that it is more likely than not that the soft strip of the existing buildings, removal of the superstructure, removal of the ground bearing slab, foundations and redundant underground fuel tanks, removal of any further ground obstructions, and remediation were carried out before 3<sup>rd</sup> February 2024:

- (1) Suite of existing plans and elevations.
- (2) Plan of obstructions removed during demolition.
- (3) Demolition Management Plan approved by London Borough of Camden pursuant to demolition.
- (4) Photographs of the demolition of existing buildings throughout 2021.

#### Conclusion

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 (DOE Circular 10/97,

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 information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the works have commenced before the application expired and the full implementation of the scheme would be lawful. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

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