

Planning Department
London Borough of Camden
2nd Floor, 5 Pancras Square
c/o Town Hall, Judd Street
London WC1H 9JE

18 June 2024

Dear Sirs

Jack Straw's Castle, North End Way (the "Property")

Albany Homes Developments Limited applies to the Council for a certificate of lawfulness, seeking confirmation that the Property's planning permission 2020/1828/P (the "**Permission**"), which permits *"Erection of two three-storey (plus basement) dwellinghouses (Class C3) on west side of car park set behind associated landscaping, refuse and cycle stores and reconfigured car parking"* has been lawfully implemented.

This application is made under s191 of the Town and Country Planning Act 1990 (as amended) ("**TCPA**")

Factual Background

Permissions

1. The Permission was granted on appeal on 17 May 2021. The Inspector imposed pre-commencement conditions on the Permission (the "**Conditions**") relating to a groundwater investigations and the appointment of a suitably qualified chartered engineer.
2. The Conditions were discharged in April 2022 (appointment of engineer) and March 2023 (pre-commencement groundwater investigations).

Works

3. This application is accompanied by photographic evidence of works which were carried out at the Property prior to 17 May 2024.
4. That evidence, which is indisputable, clearly sets out that works were carried out to the Property pursuant to the Permission. These works comprised (a) demolishing a section of the car park wall, (b) marking out the new car parking layout and (c) removal of the top layers of tarmac at the north-west corner of the Property.
5. These works are pursuant to the Permission's approved drawings.

Legal Background

London

Central Court, 25 Southampton Buildings
Holborn, WC2A 1AL

Postal and Administration address:

Churchill House, 137-139 Brent St, NW4 4DJ

+44 (0)203 150 1300

www.asserson.co.uk

Implementation

6. S56(4) TCPA sets out that a development will be lawfully commenced when one of the following occurs:
 - (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.*
7. Section s336 TCPA defines building as including part of a building, and a building as any structure or erection.
8. It has long been established that, provided that works are carried out pursuant to approved drawings, only minor works (even works which themselves do not require permission) would be sufficient to implement a planning consent.
9. In *Malvern Hills DC v SOSE (1983) 46 P&CR 58*, the Court of Appeal accepted that pegging out a road (an operation which would not require permission itself) would be sufficient to start a planning consent, on the basis that all that is required to start a consent is “*some earnest intention to develop*” and that the very minor works only needed to show “*the intention of the builders to begin development within the permitted time and, weather permitting, to proceed with it from that time forward until development was complete*”. The Court stated that the predecessor to s56 TCPA “*is a benevolent section that aims at avoiding hardship to a developer who is genuinely undertaking the development*”.
10. In *Thayer v Secretary of State for the Environment [1991] 3 PLR 104*, the Court of Appeal specifically stated that “*The specified operations are not necessarily very extensive. Very little need be done to satisfy the section. That which is done, however, must genuinely be done for the purpose of carrying out the development*”.

Analysis

11. The Conditions were discharged prior to the works taking place.

12. Clear and incontrovertible evidence has been provided which shows that works were carried out to the Property, pursuant to the Permission's approved drawings, in the period prior to the expiry of the Permission on 17 May 2024.
13. As a matter of law, the works are sufficient (as per the Court in *Malvern Hills*) to show evidence of the intention to continue with the development – the works have been carried out to enable the development. In any event, the works which have been carried out meet the definition of a material operation within s56 TCPA. These works clearly surpass the test set out by the Court of Appeal in *Thayer*.
14. Therefore, it is clear that works meeting the test within s56 TCPA were carried out prior to the expiry of the Permission, and that all pre-commencement conditions had been discharged prior to those works taking place. The Council is requested to confirm that works can continue and that lawful implementation has taken place.

Yours faithfully



Asserson Law Offices