

LDC (Existing) Report		Application number	2024/2544/P
Officer		Expiry date	
John Nicholls		05/03/2024	
Application Address		Authorised Officer Signature	
Car Park Rear Of Jack Straw's Castle Heath Brow London NW3 7ES			
Conservation Area		Article 4	
Hampstead		Yes (basements)	
Proposal			
Certificate of lawfulness, seeking confirmation that planning permission 2020/1828/P which permits the "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 commenced.			
Recommendation:		Grant Certificate of Lawfulness	

Planning permission (2020/1828/P) was granted on 17/05/2021 on appeal (Appeal A) subject to a Section 106 Legal Agreement and a number of conditions. There is an associated listed building consent for underpinning works to the Grade 2 listed Jack Straw's Castle (2020/2577/L) which was also allowed at appeal (Appeal B) on 17/05/2021. The Inspector set out various conditions across both appeals which are interlinked with the implementation of the scheme on this site.

The approved scheme is for the erection of two three-storey (plus basement) dwellinghouses (Class C3) on the west side of car park set behind associated landscaping, refuse and cycle stores and reconfigured car parking.

The certificate seeks to establish that works to commence implementation of the approved scheme commenced before the permission expired on 17/05/2024, and that the implementation of the scheme is therefore lawful and such development can continue as approved under this permission.

Applicant's Evidence

The applicant has submitted the following information in support of the application:

- A copy of the CiL Commencement Notice dated 14/05/2024;
- A signed and dated Statutory Declaration witness statement from Barry Angel, the Managing Director of Albany Homes Developments Limited, freehold owner of Jack Straw's Castle, explaining what works had been undertaken on site between 14th-16th May 2024;
- A set of photographs marked up with letters A-D cross referencing the works as set out in the Stat Dec to show what they are in the images;

- A marked up copy of the as approved proposed Landscape Plan (Plan Number 06-681-200-01 Rev R);

The applicant has also submitted the following plan:

- Site location plan (unnumbered), showing the boundary of the site outlined in red.

Council's Evidence

There are a number of pre-commencement conditions attached to the approvals (2020/1828/P & 2020/2577/L) which require details to be submitted and discharged prior to the commencement of works at the application site.

Under planning permission 2020/1828/P, these are:

- Condition 3 (ground investigation programme)
- Condition 4 (appointment of engineer)

And under listed building consent 2020/2577/L, this is:

- Condition 2 (basement underpinning details)

All three conditions are confirmed as having been discharged under approval of details applications as follows:

(2023/0226/P) dated 24/03/2023 (ground investigation programme),

(2022/1111/P) dated 27/05/2022 (appointment of engineer), and

(2024/1338/P) dated 10/05/2024 (basement underpinning details)

All three were discharged prior to the expiration of planning permission on 17/05/2024 as set out in Condition 1 of both of the relevant approvals.

An associated Section 106 (S106) Legal Agreement has a number of planning obligations which are also required to be satisfied on or prior to implementation of the planning permission (2020/1828/P). The Council's Planning Obligations Team have confirmed that the Construction Management Plan was discharged on 18/12/2023 and the levels plan discharged on 12/05/2024, and the CiL Commencement Notice was also received on 14/05/2024. Furthermore, on 07/04/2024, they informed the Planning Obligations Team that they intended to implement the permission.

However, a number of obligations contained within the s106 have yet to be discharged. An invoice has been issued in relation to Affordable Housing contributions, CMP fees and CMP Bond, and the Highways contributions. These fees all remain outstanding.

Despite these fees not being paid, prior to commencement of works on site, the Town and Country Planning Act 1990 does not mention that these must be discharged when considering if development has commenced on site in relation to an extant planning permission, and therefore, although this may have made the applicants case '*beyond reasonable doubt*' the legislation only requires the burden of proof to be '*on the balance of probabilities*', which is explained further below.

Assessment

In regard to applications for a Certificate of Lawfulness, 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 (National Planning Practice Guidance). The relevant

test is the '*balance of probability*', and authorities are advised that if they have no evidence of their own, nor any from others, to contradict or otherwise make the applicant's version of events less probable, 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.

Section 56 (2) of the Town and Country Planning Act 1990 states 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.*

Evidence provided in the application submission confirms that the owner provided written notice to the Council of the date that implementation of the development would take place as required under Clause 5.1 of the Section 106 Legal Agreement associated with planning permission (2020/1828/P). On that basis, a Section 106 Discharge Notice was issued by the Council dated 07/04/2024 in regard to the written notice provided by the owner.

Following this, works commenced on 14/05/2024 consistent with the planning approval. Photographs provided alongside a Statutory Declaration by the Managing Director of Albany Homes Development Ltd. in the application submission show the site after commencement works had commenced on that date, and indicate that;

- a small section of wall was demolished at the entrance of the site (pursuant to the landscape plan),
- part of the car park retained is shown marked out with the new arrangement of spaces (as shown on the approved Landscape Plan),
- part of the top layer of the carpark (northwest corner) has been scraped back to reveal the subsoil and existing service runs, and
- an area alongside the flank wall of the existing building has been excavated in order to ascertain the depth and condition of its foundations prior to undertaking any underpinning works.

These works were completed on 16/05/2024, and as such, prior to the expiration of planning permission on 17/05/2024 as set out in Condition 1 of the relevant approval.

Having reviewed the application submission, therefore, the evidence provided by the applicant is considered sufficient to demonstrate that the relevant works commenced in a timely fashion, consistent with the approved permission, and do constitute a '*material operation*' as defined in Section 56 of the Town and Country Planning Act 1990 (as amended).

Conclusion

Overall therefore, the information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate '*on the balance of probability*' that the works constitute a material start and commenced prior to the expiry of 3 years in compliance with Condition 1 of the relevant planning permission (2020/1828/P). The Council's evidence does not contradict or undermine the applicant's version of events.

As such, the implementation of the scheme would be lawful, and any work approved under the relevant permission and yet to commence can be completed at any time in the future.

On that basis, it is therefore recommended that a Certificate of Lawfulness can be issued.

Recommendation: Grant Certificate of Lawfulness