

LDC Report (Existing)		Application Number 2024/2989/P	
Officer Fast Track – Geri Gohin		Expiry Date 12/09/2024	
Application Address Celtic Hotel 61-63 Guilford Street London WC1N 1DD		Authorised Officer Signature	
Conservation Area Bloomsbury		Article 4 Basements	
Proposal Confirmation that planning permission 9300386 and listed building consent 9370060 (dated 07/07/1993) for "Redevelopment at the rear and fronting Herbrand Street to provide two new 5-storey rear additions and one 4-storey plus mansard addition with a new ground floor entrance on Herbrand Street" and "Demolition of 3 existing 4-storey rear additions and the erection of 2 new 5-storey rear additions and one 4-storey plus mansard rear addition fronting Herbrand Street with a new ground floor entrance and various internal alterations including the installation of a lift in the rear room to No.61 Guilford Street" were lawfully implemented by the carrying out of material operations prior to the expiry of the permissions.			
Recommendation: Grant			
<p>The application site relates to a large four-storey plus basement grade II Listed Building hotel located on the eastern side of Russell Square.</p> <p>The application building is located within the Bloomsbury Conservation Area. It forms part of a terrace of 6 houses, 61-63 is now a hotel built in c.1793-9, the front of which has been partly rebuilt after damage in World War II.</p> <p>Planning permission was granted on 7th July 1993 (application ref. 9300386) for the 'Redevelopment at the rear and fronting Herbrand Street to provide two new 5-storey rear additions and one 4-storey plus mansard addition with a new ground floor entrance on Herbrand Street.'</p> <p>Listed building consent was granted on 7th July 1993 (application ref. 9370060) for the 'Demolition of 3 existing 4-storey rear additions and the erection of 2 new 5-storey rear additions and one 4-storey plus mansard rear addition fronting Herbrand Street with a new ground floor entrance and various internal alterations including the installation of a lift in the rear room to No.61 Guilford Street.'</p> <p>This certificate of lawful development application seeks to demonstrate that works to implement planning permission 9300386 and listed building consent 9370060 have been undertaken.</p>			

Applicant's Evidence

The applicant reasons that the application was implemented by a material start (underpinning of part of the existing building) starting on 22nd June 1998 in full compliance with the extant consents and has submitted the following evidence to demonstrate this:

- A Site Location Plan
- A Statement of Case from Stanway Little Associates dated 18th July 2024 (x 6 pages)
- A Covering Letter from Stanway Little Associates dated 18th July 2024 (x 3 pages)
- A Statutory Declaration dated 4th July 2024 of David William Whitehead, original architect for the Celtic Hotel confirming that work to carry out Phase 1 of the works (construction of substantial foundations including underpinning) was started on site on 24th June 1998 (x 3 pages)
- Appendix 1 (Approved Drawings) (x 17 pages)
- List of Exhibits (A) dated 18th July 2024 (x 30 pages) including:
 1. Planning Permission
 2. Listed Building Consent
 3. Building Regulations Full Plans Submission
 4. LBC's response to Building Regulations Full Plans Submission
 5. Conditional Passing of Plans
 6. Prior Notification under the Listed Building Consent
 7. Notification of the start of the works to English Heritage
 8. Letter from Lack Conacher seeking a quotation for the works
 9. Drawings
 10. The Contract
- List of Exhibits (B) dated 18th July 2024 (x 31 pages) including:
 1. Practical Completion Certificate
 2. Contractor's marked-up record drawing
 3. Site visit records
 4. Valuation and Practical Completion Certificates
 5. Making Good Certificate and Final Certificate
 6. Notification of Phase 2 works to English Heritage
 7. Notification of Phase 2 works to LBC
 8. Scope of the works to LBC Building Control

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 1993 Planning Permission was granted subject to 4 numbered conditions (one standard and 3 additional). The additional condition numbered 1 (details of provision for access for disabled persons) required details to be submitted and approved by the Council. This was approved by the way of a Conditional Passing of Plans from the Building Control Team dated 23rd January 1998. A letter from David Whitehead dated 19th May 1998 then confirmed that *‘the approved layouts provide disabled access throughout the building except where this is impractical e.g. rooms directly off half landings. On completion of the last phase the hotel will provide :*

1. *Entry to the hotel level with pavement.*
2. *Lift access to all main floor levels.*
3. *Ground floor bedroom specifically for disabled use.*
4. *Disabled w.c. accommodation*
5. *Door opening width to suit disabled users.’*

The 1993 Listed Building Consent was granted subject to 7 numbered conditions (one standard and 6 additional). The conditions 5 (sample panels of facing brickwork) and 6 (detailed drawings or samples of materials) required details to be submitted and approved by the Council.

It is noted that both of these conditions remain outstanding, and details are still required to be formally submitted and approved in writing by the Council. As such, an informative will be added to any certificate issued reminding the applicant of this requirement.

Nevertheless, while both pre-commencement conditions have yet to be formally discharged, in this instance, the particular conditions are not considered to be central to the development or to go to the heart of the permission. Condition 5 refers to *‘relevant works’* so it is feasible that the development could commence prior to this needing to be discharged. Condition 6 refers to works that don’t involve commencement (unlike excavation works for example). Therefore, while any basement works to ‘implement’ development require a material operation to be carried out, in this particular case, they do not necessarily involve fully excavating the site nor critical elements of basement construction works.

Therefore, notwithstanding that details are still required to be formally discharged in writing in relation to both conditions, the failure to comply in a timely fashion with the requirements of both conditions is not considered in itself to render any commencement of development unlawful. Under these particular circumstances, therefore, the opportunity is provided under listed building

consent (ref. 9370060) for works to commence.

All of the other conditions that were imposed on the planning consent 9300386 and listed building consent 9370060 which were required to be discharged prior to commencement of development have been discharged and details of these applications have been provided.

The submission outlines that implementation works at the site commenced prior to the expiration of the original planning permission and listed building consent. Sufficient evidence of these works has been provided as above, demonstrating that the construction of substantial foundations including underpinning 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 9300386 and listed building consent 9370060 have commenced.

Applicants submitted evidence

On the balance of probabilities, that the works relied upon in the application for the Lawful Development Certificate (specifically, the construction of substantial foundations including underpinning commencing on in June 1998) were carried out before 7th July 1998. The following evidence, taken as a whole, shows that it is more likely than not that the construction of substantial foundations including underpinning were carried out before 7th July 1998:

- (1) Statutory Declaration of David William Whitehead dated 4th July 2024
- (2) Practical Completion Certificate dated 26th August 1998 confirming the date of the contract as 8th June 1998 and completion of the works as 4th August 1998
- (3) Records of site instruction and visit from 5th July 1998
- (4) Agreement for Minor Building Works between the owners of the property (Mr & Mrs Marazzi) and Underpin & Make Good Ltd dated 8th June 1998 for the underpinning of No. 61 Guilford Street
- (5) Letter from Underpin & Make Good Ltd to Hook Whitehead Associates dated 29th May 1998 confirming the commencement of works on or around 22nd June 1998

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)