

London Office:

80-83 Long Lane

London, EC1A 9ET

05 December 2024

Via Planning Portal only

Dear Sir/Madam,

Certificate of Lawfulness of Proposed Development

Under Section 192 of the Town and Country Planning Act 1990

To confirm that planning permission 2021/4278/P has been lawfully implemented

Please accept this covering letter in support of a lawful development certificate to confirm that the above planning permission has been lawfully implemented and that the remainder of the development may be lawfully carried out.

Firstly, case law dictates that an application under s192 can confirm that a planning permission has been lawfully implemented, and that therefore the remainder of a development may lawfully be carried out.

Specifically, In *Republic of France v RB Kensington & Chelsea*, s.192/s.26H certificates of lawfulness of proposed development had been sought and obtained on the basis that:

- A 2008 planning consent and a 2010 listed building consent permitted the works.
- Although the time for implementation of both consents had now passed, works had been carried out – lawfully – under both consents before their expiry.

The claimant – the neighbour, the French Embassy – challenged the certificates on several grounds, but the Court held that the certificates had been granted lawfully.

The claimant argued that s.192/s.26H certificates could only certify the lawfulness of proposed works, not existing works (which an authority could only certify by a s.191 certificate, and not at all in the listed buildings context). The court rejected that. There is no reason why a s.192/s.26H certificate cannot draw conclusions about the lawfulness of existing works en-route to determining that future works under the same consent(s) would be lawful.

In light of the above, this application is submitted under s.192 of the Town and Country Planning Act 1990. The following is relevant to the determination of the lawful development certificate:

- Planning permission was granted on 24th December 2021 for the part single, part two storey side extension and alterations to landscaping on north elevation, alongside a single storey extension at the lower ground floor level to the south elevation and a new dormer window to the rear roofslope, as well as a single storey outbuilding with pool and green roof on top under planning permission reference 2021/4278/P.
- The application was approved subject to eight conditions (1. Time; 2. Approved Plans; 3. Materials; 4. Details of hard and soft landscaping; 5. Compliance with Condition 4; 6. Living roof details, 7. Drawings, 8. Outbuilding in use as ancillary (compliance).
- Of those conditions, no's 1, 2, 3, 5 and 8 are compliance conditions, requiring no further action.
- Condition 4 requires the submission of landscaping details but at no specified point in time and Condition 6 requires details to be submitted prior to work beginning on the living roof. Similarly, Condition 7 requires details to be submitted prior to any work commencing on the proposed glazed structure. In light of the requirements of these conditions, details have not yet been submitted.

No conditions have yet been discharged, as no conditions were required to be discharged prior to the commencement of the start of works on site, as stipulated above. As such, the applicant has now implemented the planning permission. A trench has been dug in order to accommodate the foundations and this is highlighted within the photographic evidence that supports this application.

A trench is held by the Planning Act to represent a material operation that initiates development. Section 56 of the Act states:

(1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—

(a) if the development consists of the carrying out of operations, at the time when those operations are begun...

and thereafter states:

(4) “material operation” means—

(a) any work of construction in the course of the erection of a building;

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building...

In light of the clarity offered by the Town and Country Planning Act it is clear that the development, as outlined above, has been initiated.

I would therefore be grateful if you could issue a lawful development certificate accordingly. If you have any queries or require any points of clarification, please do not hesitate to contact me.

Yours sincerely

Allen Sacbucker
Associate
SM Planning