

LDC (Existing) Report	Application number	2024/4681/P
Officer	Expiry date	
John Nicholls	20/12/2024	
Application Address	Authorised Officer Signature	
11-12 Ingestre Road London NW5 1UX		
Conservation Area	Article 4	
None	Yes (basements)	
Proposal		
Confirmation of the lawful implementation of planning permission 2018/4449/P dated 18/08/2021 for the 'Erection of a six storey building plus single storey basement to provide 50 Assisted Living residential units (1 x 1 bed, 41 x 2 bed, 8 x 3 bed), following demolition of the existing building together with associated communal facilities, plant equipment, landscaping and 8 car parking spaces'.		
Recommendation:	Grant Certificate of Lawfulness (Existing)	

Planning permission 2018/4449/P was granted on 18/08/2021 subject to a Section 106 Legal Agreement and a number of conditions.

The approved scheme is for the erection of a six storey building plus single storey basement to provide 50 Assisted Living residential units (1 x 1 bed, 41 x 2 bed, 8 x 3 bed), following demolition of the existing building together with associated communal facilities, plant equipment, landscaping and 8 car parking spaces.

The certificate seeks to establish that works to commence implementation of the approved scheme commenced before the permission expired on 17/08/2024, 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 S106 Discharge Notice in relation to the Basement Approval In Principle dated 18/04/2024;
- A copy of the S106 Discharge Notice in relation to the Travel Plan dated 09/05/2024;

- A copy of the CIL Acknowledgement: Assumption of Liability Notice dated 27/11/2024;
- A signed and dated Statutory Declaration witness statement from Hiten Raghvani, one of the Directors of Four Quarters Ingestre Limited, freehold owner of 11-12 Ingestre Road NW5 1UX explaining what works had been undertaken on site between 10<sup>th</sup>-16<sup>th</sup> August 2024;
- A Site Visit Report by Symmetrys explaining the works, and including a set of photographs showing the works being undertaken and a plan showing the ground floor slab detail;
- A Structural Calculation Package by Symmetrys, including calculations and plans explaining the slab pour works;
- A marked up copy of the as approved proposed ground floor plan (A-P11-01 Rev F) showing the location of the poured slab on the site;
- A marked up copy of plans marked up as 'CAST Raft Slab' showing in more detail how the poured slab relates directly to the works approved.

The applicant has also submitted the following plans:

- Site location plan (A-E11-01 Rev D) showing the boundary of the site outlined in red;
- A copy of the as approved proposed basement plan (A-P11-00 Rev C)

### **Council's Evidence**

There are a number of pre-commencement conditions attached to the approval (2018/4449/P) which require details to be submitted and discharged prior to the commencement of works at the application site.

These are:

- Condition 7 (Landscape)
- Condition 10 (SUDS)
- Condition 14 (Living roof/walls)
- Condition 15 (Tree protection)
- Condition 16 (Land contamination)
- Condition 22 (Biodiversity enhancements)
- Condition 24 (Circular economy)

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

2024/1901/P dated 14/05/2024 (Landscape),

2024/1333/P dated 04/04/2024 (SUDS)

2024/2573/P dated 24/06/2024 (Living Roof/Walls)

2024/1542/P dated 18/04/2024 (Tree protection)

2024/1616/P dated 24/04/2024 (Contaminated Land)

2024/1356/P dated 08/04/2024 (Biodiversity enhancements) and

2024/1981/P dated 17/05/2024 (Circular Economy)

All seven were discharged prior to the expiration of planning permission on 17/08/2024.

- 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 (2018/4449/P). The applicant has provided copies of the s106 Discharge Notices in relation to the Basement Approval In Principle (dated 18/04/2024) and the Travel Plan (dated 09/05/2024). In addition, they have also provided a copy of the CIL Acknowledgement: Assumption of Liability Notice (dated 27/11/2024).
- Additionally, the following pre-commencement s106 conditions have been submitted and are still under consideration by the Planning Obligations team:
  - Construction Management Plan (CMP) (Schedule 3 Part 1)
  - Basement Construction Plan (Schedule 3 Part 4)
  - Employment and Training Plan (Schedule 5 Part 1)
  - Levels Plans (Schedule 7 Part 3)

Despite not all of these obligations being discharged, 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

With 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 applicant's submission confirms that the owner provided written notice to the Council that they assumed liability for the works and submitted information related to the basement Approval in Principle and Travel Plan, as listed in their S106 legal

agreement. On that basis, Section 106 Discharge Notices were issued in relation to these elements of the S106 by the Council dated 18/04/2024 and 09/05/2024 for the Basement Approval in Principle and Travel Plan, respectively. An acknowledgement letter was issued by the Council in relation to the assumption of liability dated 27/11/2024.

Following this, works commenced on 10/08/2024 consistent with the planning approval. Photographs provided within the Site Visit Report alongside a Statutory Declaration by one of the Directors of Four Quarters Ingestre Ltd. in the application submission show the site after commencement works had commenced on that date, and indicate that;

- the courtyard was cleared and light vegetation removed from the site,
- excavation was carried out and laying of the initial foundation slab were undertaken, which included concrete pouring and compacting as required.

In addition, further clarity has been provided by the applicant in the form of plans and sketches in relation to the raft slab to help explain that this has been formed as it serves a critical structural purpose as part of the approved scheme. Specifically, that it forms an integral part of the building's substructure, (as shown in the approved plans) and that it props the retaining wall (at the rear of the site), preventing structural failure and ground movement into the site.

These works were completed on 16/08/2024, and as such, prior to the expiration of the planning permission on 17/08/2024, as set out in Condition 1 of the relevant approval. The provided evidence, taken as a whole, shows that it is more likely than not that the works detailed above commenced prior to the 17<sup>th</sup> August 2024. Given that all relevant conditions requiring details to be implemented prior to work commencing had been discharged, the planning permission is considered to have been capable of lawful implementation at this time.

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

## **Conclusion**

Overall, 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 (2018/4449/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 (Existing)