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Your ref: 2011/3641/P; 2011/3639/L; 20113636/P
Our ref: HAR001/0001

26 April 2017

Dear Sir/Madam

Certificate of Proposed Lawfulness (continue development in respect of the planning permissions and listed building consent referred to below) in respect of Klippan House, 50 Well Walk, London, NW3 1BT (the "Property").

Town and Country Planning Act 1990, Section 192

Planning (Listed Building and Conservation Areas) Act 1990, Section 26H

We act as legal representatives of the Applicant (Daniel Harris), who is the freehold owner of the Property. We write this letter in support of the applications submitted pursuant to the above.

We enclose for your attention three applications for a certificate of lawfulness in respect of a proposed operations (in this instance the continued implementation of the planning permissions and listed building consent) pursuant to the following:

1. Planning permission 2011/3641/P dated 29 January 2014;
2. Planning permission 2011/3636/P dated 17 April 2014; and
3. Listed building consent 2011/3639/L dated 23 April 2014.

In accordance with the relevant regulations governing the submission of an application for certificate of proposed lawful works, each application includes:

1. The requisite application form;
2. The requisite site location plan (drawn to scale with the North direction showing);
3. A copy of a Statutory Declaration by the contractors who carried out the works at the Property;
4. A copy of all relevant evidence to support the application; and
5. The relevant fee of £86 per certificate.

Partners: Elizabeth Christie, Mary Cook, Clare Fielding, Meeta Kaur, Simon Ricketts, Patrick Robinson

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tn.

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We note that the relevant forms also request additional copies (x3) of 1 – 4 above in respect of the applications. However, as we have been unable to submit the forms online (because the submission of the application for a certificate of proposed lawfulness in respect of the listed building consent is not available online and the applications are all related so we consider it prudent that they all be submitted together as one composite pack), we have been in correspondence with Matthias Gentet (Planning Technician at Camden) and Matthias has confirmed in an email dated 25 April 2017 that the Council now work electronically exclusively so we need only provide **one paper copy** per application and do not need to provide the additional three copies, as all the paperwork will be scanned.

The application site

The Property is a two-storey plus basement and attic detached house, known as Klippan House, at the corner of East Heath Road and Well Walk. In addition, one detached garage faces towards East Heath Road. Klippan House is Grade II listed and was built in 1881 in an Arts and Crafts style. The detached garage dates from the 1920's with red brick walls and pitched tiled roofs, adjoining the neighbouring No. 8 East Heath Road.

The Property is located in the Hampstead Conservation Area.

The statutory framework

The applications made in respect of works under the planning permissions 2011/3641/P and 2011/3636/P are made pursuant to Section 192(1) of the TCPA 1990. The application made in respect of the listed building consent 2011/3639/L is made pursuant to Section 26H of the LBA 1990. Both of those legislative powers allow for a certificate to be issued by a Local Planning Authority to determine if a proposed operation (in this instance the continued implementation of those permissions/consent) would be lawful.

When a CLOPUD is made, the Local Planning Authority is required to consider the lawfulness of the use at the time of the application and to issue a certificate if it is satisfied that it should do so on the basis of the factual documentation submitted and the legal framework. It is not a planning judgement. Lawfulness is defined by Section 192(2) of the TCPA 1990 as follows:

“the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or began at the time of the applications, they shall issue a certificate to that effect; and in any other case they shall refuse the application”.

Section 56 of the TCPA 1990 defines the circumstances in which development will be taken to be initiated. In the present case, the planning permissions and listed building consent are not for a change of use. The use of the Property was, and will remain to be, Class C3 (residential) or ancillary to that primary use. The planning permissions and listed building consent relate to operational works. The permission granted in January 2014 (2011/3641/P) permits the construction of a new single storey garage plus staircase link at the rear to approved underground swimming pool. The permission granted in April (and the corresponding listed building consent) includes the demolition of the garage adjacent to 8 East Heath Road and a creation of a new underground swimming pool with ancillary plant and gym rooms connected to the main building via a basement corridor link.

Subsections 56(2) and (3) further provide that the date of commencement of development for the purposes of satisfying the time-limit condition imposed under Section 91 is to be the earliest date on which any “material operation comprised in the development” begins to be carried out. Once a material operation comprised in the development has been carried out, and provided all pre-commencement conditions have been complied with, the planning permission will have been lawfully implemented and thereafter be capable of full delivery without a time limit. Subsection (4) of Section 56 lists all those items of work which can constitute a material operation. For the present purposes, it is sufficient to note that a material operation includes any work of construction in the course of the erection of a building, digging trenches for work to the foundations and any demolition work to a building. By virtue of Section 336 of the TCPA 1990, the term “erection” in relation to buildings includes extensions and alterations and the word “building” includes any part of a building. Accordingly, works to the basement of a building would constitute a material operation.

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Failure to comply with a condition attached to a planning permission or listed building consent which expressly prohibits any development taking place before its terms have been complied with can, in some circumstances, have the effect of rendering those such works unlawful and incapable of constituting the commencement of development. Each condition has to be considered on its terms and against strict interpretation as to whether it is a true condition precedent which goes to the heart of the permission (*R (on the application of Hart Aggregates Ltd v Hartlepool Borough Council* [2005] EWHC 840).

In the present case, there are some pre-commencement conditions. Dealing with each in turn: -

- Condition 4 of permission 2011/3641/P requires that prior to the commencement of any works on site, details of how trees will be retained and protected will be submitted to and approved by the Local Planning Authority. Such details were submitted to the Authority and approved on 20 May 2016 with approval notice reference 2016/2122/P;
- Condition 2 of permission 2011/3636/P requires that no development shall take place until there has been submitted to and approved in writing by the authority a scheme of hard and soft landscaping works; Such details were approved as part of the green roof submission on 22 August 2016 reference 2016/3184/P; and
- Condition 5 of permission 2011/3636/P requires that development shall not commence until a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works. Details were approved on 11 August 2016 with approval notice reference 2016/3340/P.

There are no pre-commencement conditions attached to the listed building consent. Accordingly, all pre-commencement conditions were complied with prior to any works taking place at the Property pursuant to the planning permissions and listed building consent.

The works

Since the grant of the planning permissions and the listed building consent, the following works have been undertaken to the Property:

1. Preparation and set up of site for basement works, followed by piling and sheet piling of foundations for basement structure; and
2. Demolition and reclamation of part of the garage roof structure.

The case to be made

It is appreciated that the onus of proof lies with the Applicant to prove the contention that a material operation comprised in the development has lawfully occurred and in time. The legal test, as derived through case law, is whether the works done are in accordance with the planning permission(s) and listed building consent; and second, whether they are more than de minimis. This is a matter of fact and degree. Dealing with each in turn:-

(a) Piling works

In the present case, the piling works are connected to the laying of the foundations for the basement alteration works. It occurs at a deep level of the soil that lays beneath and therefore requires extensive earth extraction to the lower levels for the foundations to be set at the required level. This is clearly a material operation under the statutory framework set out in this note. The works have also been carried out in accordance with the approved documents and plans (where applicable), and the development description for the works to the basement, so is clearly a "material operation comprised in the development".

The next question is when was this work carried out? The piling work commenced in and completed in November 2016. The contractor was TE Design and Build Ltd and they make a Statutory Declaration, as

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enclosed, in support of this factual statement. Also attached to the Statutory Declaration is the relevant approved drawings, the most relevant of which being that within from the construction management plan relating to piling (reference 8414). This has been marked up to show the Local Planning Authority the proximity of the works to the building such that the works have taken place as part of the Planning Permissions, and is sufficiently connected with the works permitted thereunder being the basement works and access corridor which is directly located below those such works.

On 1 December 2016, a building regulations inspector wrote to confirm they had inspected the piling works and they considered it amounted to commencement of works with photographic evidence to show the extent of works.

We therefore submit that the piling works are a material operation comprised in the development permitted pursuant to planning permission 2011/3636/P and corresponding listed building consent 2011/3639/L.

(b) Demolition of garage roof structure

The contractor has also commenced demolition of the roof structure on the garage adjacent to East Heath Road removing the tiling as shown in progress in the photographic evidence provided. This work was commenced in November 2016 by the same contractor, TE Design and Build Ltd. The remainder of the demolition and erection of the new building will continue, subject to grant of the certificate of proposed lawfulness, pursuant to permission 2011/3641/P and all the approved drawings thereunder.

We therefore submit the demolition works are a material operation comprised in the development permitted pursuant to 2011/3641/P. The demolition works are also approved under listed building consent 2011/3639/L, and accordingly, the demolition works to the garage roof structure also implement that consent.

It is also noted that the approved plans are the same for both permissions and the listed building consent as the works are effectively for the same proposal to create a swimming pool and basement link through from the dwelling house to the new building in place of the garages. Accordingly, we consider that it is appropriate to consider the applications together and that the below ground piling works and digging trenches for foundations of the corridor link is sufficient to implement all permissions and consents referred to herein.

Accordingly, by virtue of Section 56 of the TCPA 1990 these works can be characterised as a "material operation in the development", and therefore the permissions and listed building consent remain extant and that, as a result, the Applicant may continue to implement the operational development permitted thereunder.

Section 106 Agreement

There is a Section 106 Agreement relating to the Property dated 24 April 2016. There is an obligation therein to make a highways contribution and submit and have approved level plans prior to implementation. The Applicant has complied with both obligations and did so in advance of any works taking place at the Property. We enclose the discharge notices.

Conclusion

We consider that the evidence produced has discharged the onus on the Applicant to prove, on the balance of probabilities, that the applications made for the certificate of proposed lawful works under Section 192 TCPA 1990 and Section 26H LBA 1990 are correct and certificates should be issued by the Local Planning Authority.

Please kindly acknowledge safe receipt to spencer.tewis-allen@townlegal.com.

Yours faithfully,


Town Legal LLP

Encs.

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Evidence submitted in respect of all three applications

Tab	Name of document
1.	Application for certificate of proposed lawfulness for 2011/3641/P
2.	Application for certificate of proposed lawfulness for 2011/3636/P
3.	Application for certificate of proposed lawfulness for 2011/3639/L
4.	Site plan for permissions 2011/3641/P and 2011/3636/P
5.	Site plan showing listed building for consent 2011/3639/L
6.	Planning permission 2011/3641/P
7.	Planning permission 2011/3636/P
8.	Listed building consent 2011/3639/L
9.	Title for the property
10.	Discharge notice of pre-commencement planning conditions
11.	Letter sent to London Borough of Camden notifying anticipated date of implementation dated 9 November 2016
12.	Statutory declaration
13.	Relevant approved plans
14.	Photographs of piling works and garage works
15.	Letter dated 1 December 2016 regarding Building Regulation Inspection
16.	Section 106 discharge notices from London Borough of Camden
17.	Invoice for works addressed to Mr Harris' company.