

ESSENTIAL LIVING (SWISS COTTAGE) LTD
IMPLEMENTATION OF AVENUE ROAD PERMISSION

ADVICE

1. This Advice covers (1) mode of commencing Essential Living's ("EL") Avenue Road development, (2) evidential matters, (3) certification, and (4) timing.
2. The Avenue Road development was consented by the Secretary of State on appeal by letter dated 18 February 2016, ref APP/X521/W/14/3001616 ("the Permission"); it comprises the demolition of the existing building at 100 Avenue Road, London NW3 3HF and the construction of a residential-led mixed use development ("the Scheme").
3. The Permission was accompanied by a section 106 agreement dated 24 August 2015. Both the Permission and the section 106 contain pre-commencement stipulations. I am instructed that these have now been satisfied, insofar as they would have precluded a lawful start on site by demolition.
4. As for the mode of commencement, what is required is a "material operation" (see s.56(4) of the Town and Country Planning Act 1990). The Courts have held that this must be securely referable to the scheme which is the subject of the permission – "comprised in the development", as the court has put it.
5. In this case, EL has identified the entrance steps and ramp at the front of the existing building as a material operation which is comprised in the development. I agree. There is no doubt that the removal of such a structure would (1) be judged of sufficient scale to count as a "material" operation, and (2) fall within the approved drawings and the description of development. If EL demolished the steps/ramp, it would commence the Permission. Due to the discharge of pre-commencement conditions, and subject to the administrative requirements of notice/method statement and the Building Act, I consider that the demolition would lawfully commence the Permission.

6. It is important that the commencement is properly evidenced. EL are, I am aware, intending to let LB Camden know of the details of the demolition in the proper way before it occurs. They should also:
- Document the exchanges they have on the matter with LB Camden
 - Take a suite of before and after photographs or video footage
 - Collate the relevant drawings, the record of the pre-commencement condition discharges, and the photographs/footage in one properly-ordered pack
 - Seek a certificate from LB Camden under s.191 of the TCPA 1990 to verify in a determinative way that the development has been commenced; if there is any doubt (which seems unlikely) then an appeal should be made to an Inspector to issue the Certificate.
7. Certification is important even where, as here, there is no intention of delaying the build-out of the Scheme, once it has been implemented.

RUPERT WARREN Q.C.

**Landmark Chambers
180 Fleet St
London EC4A 2HG**

6 November 2017