

Mr Rob Tulloch  
Senior Planning Officer  
Planning Solutions Team  
London Borough of Camden  
2<sup>nd</sup> Floor  
5 Pancras Square  
London  
N1C 4AG

Dear Rob,

**26 Kings Mews, London, WC1N 2JB**  
**Application for a Lawful Development Certificate**

On behalf of our client, WC1Projects Ltd (*the applicant*), DLP Planning Ltd are pleased to enclose an application for a Lawful Development Certificate for 26 King's Mews, London, WC1N 2JB (*the site*) which is located within the local authority area of the London Borough of Camden (*the Council*). The planning portal reference number is PP-06712036.

The Lawful Development Certificate application seeks to confirm that a planning permission granted by the Council has been lawfully implemented and is therefore made under Section 191 of the Town and Country Planning Act 1990 (as amended).

It is the applicant's contention that the planning permission, as described below, was lawfully implemented on the 1<sup>st</sup> February 2018.

***Background***

The Council granted planning permission (*the planning permission*) ref. 2013/7847/P at the site for the following development:

*"Erection of 3 storey 3 -bedroom dwelling house with basement (Class C3), following demolition of existing office/warehouse (Class B1/B8)."*

Key dates for the planning permission are as follows:

- Submission – 7<sup>th</sup> December 2013
- Validation – 10<sup>th</sup> January 2014
- Committee resolution to grant planning permission – 20<sup>th</sup> March 2014
- Date of permission – 13<sup>th</sup> February 2015

The planning permission was granted subject to conditions and a Section 106 Legal Agreement was entered into by the applicant and the Council which relates to the planning permission.

A Minor Material Amendment application under Section 73 ref. 2016/1466/P was submitted to the Council but was subsequently withdrawn.

### ***Has the planning permission been lawfully implemented?***

In order to answer this principal question, there are a number of sub-questions that need to be answered. These are:

1. Are there planning conditions attached to the planning permission that impact upon its ability to be lawfully implemented?
2. Has the relevant trigger point as set out under Section 56 of the Town and Country Planning Act 1990 (as amended) been met?
3. Are there any other matters which would materially impact upon the lawfulness of the implementation of the planning permission?

#### ***Planning conditions***

The planning permission was granted subject to nine conditions. The conditions are a mixture of what are commonly referred to as instructive, pre-commencement and pre-occupation. With respect to the pre-commencement and pre-occupation, which require the submission of information to the Council for its approval, no applications for their discharge have been made.

FG Whitley & Sons v Secretary of State for Wales and Clwyd County Council (1992) 3 PLR 72, known as the Whitley principle, established that development permitted by a planning permission has to be read with the planning conditions imposed on it, and if material operations contravened the conditions, this would constitute a breach of planning control and for planning purposes would be unauthorised and therefore unlawful. Following the Whitley case, there has been various subsequent case law, most notably R (Hart Aggregates Ltd) v Hartlepool Borough Council [2005] EWHC 840 (Admin) and Greyfort Properties Ltd v. SSCLG [2010] EWHC 3455 (Admin), that has provided instruction on how conditions affect the lawfulness of a planning permission. These cases principally relate to the effect a 'pre-commencement' condition has on the lawfulness of the implementation of a planning permission if they are not complied with.

The outcome of the above case law is that for a condition to be truly precedent, it must be prohibitive in its wording or meaning and go to the heart of the permission, such that the details it requires are not merely ancillary to the planning permission, such as, for example, the landscaping and boundary treatment of a new development, but fundamental to it, such that the development could not proceed without their approval.

In relation to the planning permission, it is noted that four of the nine conditions are 'pre-occupation' and so are not relevant as to whether the works have commenced lawfully. Three of the conditions are 'instructive' and include the list of approved plans and a restriction of Permitted Development rights and so again are not relevant. Condition 1 relates to the time period for the implementation of the planning permission, and is of course relevant and so set out in detail in the next section.

Only two of the conditions, numbers six and seven, could be described as being 'pre-commencement' in some way; the conditions relate to details of facing materials and a sample panel of the facing brickwork respectively. However, it is noted that with respect to both of these conditions, the information that must be provided to the Council for their approval is linked to the elements of the condition specifically, rather than the trigger point for the submission being the commencement of the development of the whole planning permission. Moreover, the Council sensibly and

pragmatically used the form of wording ‘before any work is commenced on the relevant part of the development’ which links the approval of the details to that trigger point, i.e. in the case of condition 6, before the facing materials are installed. Condition 7 is worded similarly.

The impact of this is that there are no planning conditions imposed on the planning permission that meet the established case law of being a true ‘precedent’ condition, and as such do not have any impact on whether the planning permission can be lawfully implemented though a material operation (although of course the applicant accepts that in due course all the planning conditions will need to be complied with at the appropriate point in time).

*Section 56 of the Town and Country Planning Act 1990 (as amended)*

As noted above, condition 1 of the planning permission does set out that:

*“The development hereby permitted must be begun not later than the end of three years from the date of this permission.*

*Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).”*

The effect of condition 1 is that development of the planning permission must begin within three years of 13<sup>th</sup> February 2015, which is 13<sup>th</sup> February 2018.

Section 56 of the Town and Country Planning Act 1990 (as amended) sets out the following:

*“Time when development begun.*

*(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;*

*(b) if the development consists of a change in use, at the time when the new use is instituted;*

*(c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).”*

*(2) 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.” (our emphasis)*

Section 56 of the Town and Country Planning Act 1990 (as amended) goes onto state the definition of a material operation includes “*any work of demolition of a building.*”

The planning permission specifically authorises the demolition of the building and indeed it is axiomatic that these works must commence first before the erection of the new building can take place. Accordingly, the key trigger point for the implementation of the planning permission is the date on which any work of demolition of the building first took place.



dynamic development solutions <sup>TM</sup>

It was the applicant's intention that the planning permission be lawfully implemented and mindful of the deadline, took the appropriate action to direct that a contractor commenced the required demolition works. Accordingly, the applicant issued the enclosed letter of instruction to Crompton Construction Ltd, dated 25<sup>th</sup> January 2018 and authorising them to commence the demolition works on the 1<sup>st</sup> February 2018.

Crompton Construction Ltd undertook the works on the 1<sup>st</sup> February. The enclosed date stamped photo indicates the nature of the works that had taken place, i.e. the stripping and removal of part of the roof of the site.

An invoice from Crompton Construction Ltd is also submitted in support of this application. The invoice confirms that works to the property commenced on 1<sup>st</sup> February, and that as of the 9<sup>th</sup> February part of the works had been completed. The works involved the *"Removal of roof panels, hip, skylight etc from 26 King's Mews as per WC1 Projects Limited instruction dated 25 January 2018."*

From this evidence it can be shown that a material operation took place with respect to the implementation of the planning permission on the 1<sup>st</sup> February 2018, this being the start of the demolition of the roof of the building. It is unquestionably the case that these works meet the definition of *"any work of demolition of a building"* as set out in section 56 of the Town and Country Planning Act 1990 (as amended), and therefore constitute the lawful implementation of the planning permission.

#### *Any other matters*

The planning permission is liable for the Mayoral Community Infrastructure Levy (CIL). The appropriate CIL forms were issued to the Council before the commencement of the development authorised by the planning permission. Whilst the failure to do this would not have materially affected the lawfulness of the planning permission, it is further evidence of the intention of the applicant to commence the development within the timescales set by condition 1.

With respect to the Section 106 Agreement entered into by the applicant and the Council, it is of course the case that this does not form *part* of the planning permission. Rather, an agreement that falls under the regime of Section 106 of the Town and Country Planning Act 1990 (as amended) is, in effect, a contract. Accordingly, the provisions of the Section 106 Agreement insofar as they relate to the planning permission do not, in law, affect its lawfulness in terms of implementing the consent.

#### **Conclusion**

Planning permission ref. 2013/7847/P was lawfully implemented on the 1<sup>st</sup> February 2018. Accordingly, the applicant requests that the Council issue a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990 (as amended) to confirm this.

We look forward to receiving confirmation that the application has been registered and will be at your disposal throughout the Council's consideration period should you have any questions or queries.



*dynamic development solutions™*

Yours sincerely,

A handwritten signature in dark blue ink, appearing to read 'ARyley'.

**Andrew Ryley MSc MRTPI**  
**Associate Director**

Enclosed: as referred to above.