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11 March 2019

London Borough of Camden
Planning Department
2nd Floor – 5 Pancras Square
c/o Town Hall
Judd Street
London
WC1H 9JE

Dear Sir / Madam

**50 REDINGTON ROAD, NW3 7RS
APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR PROPOSED DEVELOPMENT
TOWN AND COUNTRY PLANNING ACT 1990, SECTION 192
SUBMITTED VIA THE PLANNING PORTAL, REF. PP-07684894**

On behalf of our client, Mr Marcus Donn, we hereby submit an application for a lawful development certificate for proposed development at 50 Redington Road, NW3, in relation to planning permission granted on 31 March 2015 (ref. 2014/4531/P) (“the 2015 Permission”).

This application is made under Section 192 of the Town and Country Planning Act 1990 (as amended) for a Certificate of Lawfulness to confirm that works undertaken have lawfully commenced development.

Application Site and Background

The Site is shown edged in red on the Site Location Plan provided as part of the Application.

On 31 March 2015, planning permission was granted (ref. 2014/4531/P) for:

“Erection of new dwellinghouse comprising three storeys plus excavation of two basement levels, following demolition of existing.”

A copy of the decision notice for the 2015 Permission is provided with this Application.

Purpose of this Application

This Application is submitted pursuant to Section 192(1) of the Town and Country Planning Act 1990 and seeks to ascertain whether:

“...(b) any operations proposed to be carried out in, on, over or under land, would be lawful...”

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Confirmation is sought that the works undertaken to date have lawfully implemented the 2015 Planning Permission, and further works pursuant to that permission can be undertaken, without enforcement action being taken by the local planning authority.

Implementation of Planning Permission

Condition 1 of the Permission requires that the development be begun not later than the end of three years from the date of the permission (i.e. 31 March 2018). Condition 2 requires the development to be carried out in accordance with the approved plans and submitted documents.

The pre-commencement conditions attached to the 2015 Permission have all been discharged, between December 2017 and June 2018, as follows:

- Condition 4 – Hard and Soft Landscaping – 2018/0172/P – granted 8 February 2018;
- Condition 5 – Tree Protection Measures – 2017/6528/P – granted 7 December 2017
- Condition 7 – Appointment of Chartered Engineer – 2018/0172/P – granted 8 February 2018;
- Condition 8 – Sustainable Urban Design – 2018/1461/P – granted 8 June 2018.

Accordingly all pre-commencement planning conditions associated with the 2015 Permission have been discharged, although it is noted that condition 8 was discharged following the expiry of the planning permission.

Information to discharge pre-commencement condition 8 was initially registered under application ref. 2018/0193/P on 1 February 2018. Following receipt of comments from the sustainability officer, the information was revised and resubmitted under a separate application to the Local planning Authority on 21 March 2018 and validated on 12 April 2018. This was discharged on 8 June 2018 (ref. 2018/1461/P).

The Courts (*F G Whitley & Sons v Secretary of State for Wales (1992)* and *Leisure Great Britain Plc v Isle of Wight Council (1990)*) have established that planning permission may be lawfully commenced where it has begun before the approval of details required by pre-commencement conditions, provided the developer has:

- i. Applied for the required approval before the works undertaken;
- ii. The works undertaken comply with the details; and
- iii. Those details are subsequently approved by the local planning authority.

Addressing each of these points in turn:

- i. An application for the discharge of Condition 8 was submitted on 21 March 2018, prior to the commencement of works on 28 March 2018 (see below);
- ii. The works undertaken were in accordance with the planning permission and relevant details submitted as part of the pre-commencement condition, including condition 8 (ref. 2018/1461/P);
- iii. The details as set out in application 2018/1461/P were subsequently discharged by the Local Authority on 8 June 2018.

For the purposes of CIL, Montagu Evans issued a Commencement Notice to LBC on 20 March 2018, confirming an intended commencement date of 26 March 2018.

Commencement of Development

Section 56 (1) of the Town and Country Planning Act 1990 states that development of land shall be taken to be initiated 'if the development consists of the carrying out of operations, at the time when those operations are begun'.

Section 56 (2) states that 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.

'Material operation' is defined in Section 56 (4) as:

- (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.

Section 336(1) of The Town and Country Planning Act 1990 defines 'building' as including any structure or erection and any part of a building. The same provisions of this Act define 'erection' as including extension, alteration or re-erection

Evidence of Works

Contractors, Abbey Pynford provided an *Officer Document for Pre-Construction and Trial Piling* works on 1 February 2018. This sets out their proposal to install 3 no. bored piles at the Site, in line with the structural engineers proposals approved under the 2015 Permission. This is provided at **Appendix 2**.

The contractors prepared a drawing (ref. SK01 Rev B), which identifies the *Setting Out of Phase 1 Piles* at the Site, in three locations. This is provided at **Appendix 3**. This should be read in conjunction with the *Piling General Arrangement Plan*, which is provided at **Appendix 4** and which overlays the footprint of the existing building.

A copy of the contractors' invoice for undertaking the works, dated 14 March 2018 is provided at **Appendix 5**

Accordingly, mobilisation works and the site setup were implemented during the week commencing 19 March 2018. The works pursuant to the planning permission, commenced on **28 March 2018** through bored piling works.

The contractor's daily work sheets are provided at **Appendix 6**, which set out the works undertaken on each day from site set up on 22 March to completion of the piling on 29 March 2018.

Michael Alexander Consulting Engineers visited the Site during the piling operations and provide a *Site Visit Record* for both days which set out their observations of the work being undertaken. These two reports are provided at **Appendix 7**, and include dated photographs of the works.

The above works were undertaken by Abbey Pynford as main contractor and were undertaken in accordance with the approved scheme. The works which have been undertaken clearly fall within the definition of "material operation" as per Section 56 (4) of the TCPA 1990 (as amended).

It is considered that in carrying out this work, a material start to the 2015 Permission has been made and therefore the planning permission has been formally implemented, within the time period stipulated by Condition 1.

Conclusion

This Application demonstrates that on the balance of probabilities, 'material operations' pursuant to the 2015 Permission have been carried out in accordance with the approved plans and relevant conditions, and prior to the expiration of the planning permission.

The Applicant seeks confirmation that the commencement of the development shown in the approved drawings is lawful and a Lawful Development Certificate for Proposed Development should therefore be issued to certify that the development permitted on 31 March 2015 can be completed at any time.

Application Procedure

The Applicant, Mr Marcus Donn is the freeholder of this Site.

Please note that the information as set out below has been submitted on-line via the Planning Portal website, reference PP-07684894.

The following documents form the Application submission:

- Application Form for a Lawful Development Certificate of Proposed Development;
- Site Location Plan;
- Copy of the Decision Notice for The 2016 Permission;
- Appendices
 - APP1 - Copy of decision notices for pre-commencement conditions;
 - APP2 - Abbey Pynford - Offer Document for pre-construction and trial piling (9 Feb 2018);
 - APP3 - Abbey Pynford – Setting Out of Phase 1 Piles – ref. SK01 Rev B;
 - APP4 - Abbey Pynford – Piling General Arrangement Plan;
 - APP5 – Abbey Pynford – invoice (14 Mar 2018);
 - APP6 – Abbey Pynford – Daily Work Sheets and Pile Logs (22 – 29 Mar 2018); and
 - APP7 – Michael Alexander – Site Visit Records (28-29 Mar 2018).

Please note that payment of the application fee (£231) has been calculated based on half of the fee for the erection of a single dwellinghouse. The application fee will be paid on the Planning Portal, including its relevant service charge.

We trust the above is sufficient to enable the validation and determination of this Application. If you have any queries, please contact either Tim Miles (020 7312 7444 / tim.miles@montagu-evans.co.uk) or James Huish (020 7312 7484 / james.huish@montagu-evans.co.uk).

Yours sincerely



Montagu Evans LLP