
Certificate of Lawfulness

17 Middlefield, London, NW8 6ND

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1. Introduction

- 1.1. On behalf of our Client, Waxflower Properties Ltd, Savills have been instructed to submit this application to obtain a Certificate of Lawfulness to confirm the lawful implementation of planning permission 2015/5241/P (see Appendix 1) at 17 Middlefield, London, NW8 6ND.
- 1.2. This application will demonstrate that all pre-commencement conditions, planning obligations and relevant notice has been given to the Local Planning Authority and works to implement the permission have been undertaken in accordance with Section 56 of the Town and Country Planning Act 1990 (as amended) constituting a material start on site.
- 1.3. The National Planning Practice Guidance (PPG, 2014) sets out the guidelines for submitting an application for a Certificate of Lawful Existing Use or Development. Paragraph 005 advises that an application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application along with the relevant application forms and fees. Paragraph 005 of the PPG advises that for the purposes of an application for a lawful development certificate the following should be provided:
 - A plan identifying the land;
 - Evidence to verify the information in the application;
 - A statement setting out the owner's interest in the land.
- 1.4. Paragraph 006 of the PPG advises that the applicant is responsible for providing sufficient information to support an application and that in the case of applications for existing use, if the local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability
- 1.5. Accordingly this application demonstrates that on the balance of probability and in accordance with advice from the NPPG, that the planning permission has been lawfully implemented and is therefore immune to any future enforcement. Consequently, a Certificate of Lawfulness should be issued.

2. Site Description and Relevant Planning History

- 2.1. The existing site is currently occupied by is a 2 storey detached property that is in use as a single family dwelling.
- 2.2. The building is east facing, and features a garden to the rear. The rear boundary of the site backs on to Finchley Road. The building is not listed, and does not lie within a conservation area.
- 2.3. 17 Middlefield is part of a group of similar detached buildings, which form part of the wider 'Middlefield' area. Immediately opposite the application site is one of two 3 storey residential terraces also forming part of Middlefield, and south of these is Blair Court – a 12 storey residential tower block.
- 2.4. The most relevant planning history relating to this property is the 2015 application (ref: 2015/5241/P – the original permission), which was granted in October 2015 for the following development, "*Erection of two storey plus basement, five bedroom dwelling house (Class C3) following demolition of existing.*"
- 2.5. The original 2015/5241/P permission is the scheme that has been implemented at 17 Middlefield for which a Certificate is being sought. As such, the following evidence is provided to support this application and appropriately demonstrates that lawful works have undertaken to implement the planning permission:
 - Discharge of pre-commencement planning conditions (appendix 2).
 - Discharge of S106 Obligations and associated correspondence (appendix 3).
 - CIL forms completed and submitted (appendix 4).
 - Written notification of intention to implement (appendix 5).
 - Statutory Declarations from the appointed contractor and the applicant (appendix 6).
 - Photos of works being undertaken on the site (appendix 7).

3. Information Submitted in Support of this Application

- 3.1. The permission which is the subject of this Certificate application is ref: 2015/5241/P for the '*Erection of two storey plus basement, five bedroom dwelling house (Class C3) following demolition of existing.*'
- 3.2. In order to demonstrate on the balance of probability that lawful works have been undertaken to implement the decision the applicant has submitted the following evidence to support this Certificate application:
- Documentation of pre-commencement planning conditions being discharged.
 - S106 contribution towards highways works being paid.
 - S106 obligations in relation to a Construction Management Plan and Level Plans being discharged.
 - Written notification to the S106 officer of the applicant's intention to commence works.
 - Relevant CIL forms submitted including the commencement notice.
 - Two Statutory Declarations (one from the contractor and one from the applicant) confirming that all works have been carried out in accordance with instruction.
 - A certificate from R.P. Testing Solutions outlining the piling at 17 Middleton passed all integrity tests.
 - Photos of works undertaken.
- 3.3. The planning documentation confirms that all pre-commencement requirements have been met in order for the development to start lawfully.

Approval of Pre-Commencement Conditions (Appendix 2)

- 3.4. Decision notices relating to the discharge of two pre-commencement condition applications submitted to Camden Council in 2019 have been included as part of this application at Appendix 2. The discharge of these conditions demonstrate that the applicant has complied with all of the pre-commencement requirements prior to works starting on site. The pre-commencement conditions which are shown on the planning permission (ref: 2015/5241/P) are as follows:
- Condition 4 (Appointment of Qualified Engineer) – 2019/1416/P, Approved 28 May 2019.
 - Condition 11 (Landscape Strategy) – 2019/1416/P, Approved 28 May 2019.
- 3.5. The discharge of condition applications were submitted by Savills and supported by various additional information in order to discharge the conditions. The conditions demonstrate that the permission has been implemented lawfully and can be considered to be safeguarded on the balance of probability.

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Section 106 Obligations (Appendix 3 and 5)

- 3.6. The S106 Agreement included various financial and non-financial obligations including a £5,000 highways contribution, level plans and a Construction Management Plan to be submitted prior to works commencing on the site.
- 3.7. Payment details were requested from the Council in relation to the £5,000 highways contribution on the 13 December 2018 via email to the planning obligations team. The planning obligations team then issued a payment request letter on the 14 December 2018 which set out the total amount due and details of payment. Payment was subsequently made by the applicant on the 19 December 2018 for the total amount of £5,400.43 (index linked) with payment ref: S07421-LP04892.
- 3.8. Camden Council then confirmed in writing that the payment had been received through and acknowledgement of receipt of section 106 payment on the 19 December 2019.
- 3.9. Also as required by the S106 Agreement, existing and proposed level plans were submitted to the planning obligations team using their pro-forma document on the 15 March 2019 via email. The drawings that were submitted as part of the pro-forma included 0881 – EX.Levels and 0881 – PL.Levels.
- 3.10. A Section 106 discharge notice was subsequently issued by the Local Planning Authority, outlining that the covenant under with clause 4.2.2 of the Section 106 Agreement had been discharged on the 16 April 2019.
- 3.11. Lastly, details of the submitted Construction Management Plan (CMP) have been included as part of this certificate application. The CMP submission was in the Council's Pro-Forma document which originally was submitted to the Planning Obligations team on the 16 April 2019 via email.
- 3.12. Following consultation with internal departments, the CMP was amended in response to highways comments. A revised version of the CMP was then submitted via email on the 3 May 2019. Further comments from highway officers were then received on the 10 May 2019 and again an updated CMP was submitted on the same day.
- 3.13. The applicant was then informed that the CMP was found to be acceptable on the 21 May 2019. The Council issued written confirmation on the 21 May 2019 that the covenant under clause 4.1.1 of the signed S106 Agreement dated 7 July 2016 has been discharged.
- 3.14. The Planning Obligations team then confirmed via email on the 22 May 2019 that all pre-commencement obligations within the S106 Agreement dated 7 July 2016 have been satisfied.
- 3.15. In accordance with Clause 5.1 of the signed legal agreement, written notification of the applicant's intention to commence works was sent to the Council's Planning Obligations team on the 29 May 2019. Clause 5.1 set out that the owner shall give written notice to the Council on or prior to the implementation date. The letter confirmed that works were due to commence on the week commencing 3 June 2019 and sought written acknowledgment from the Council. As the notification was submitted prior to the implementation of works this complied with the covenant.

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- 3.16. The Council's S106 Monitoring Officer gave written acknowledgement of the notice served on the 29 May 2018 via email. The email also enclosed a discharge notice dated 29 May 2019 that confirmed the covenant under clause 5.1 of the signed legal agreement dated 7 July 2016 has been discharged.
- 3.17. On this basis, it is considered that the applicant has complied with the relevant covenants of the signed legal agreement dated 7 July 2016 prior to undertaking works to implement the permission. This evidence demonstrates that in complying with the covenants, the works were undertaken lawfully and will therefore enable the permission to be safeguarded.

Community Infrastructure Levy (CIL) (Appendix 4)

- 3.18. The applicant has submitted all the relevant CIL notices to the Council's CIL team as follows:
- CIL Assumption of Liability Notice – submitted 12 November 2018 via email.
 - CIL Commencement Notice – submitted 29 May 2019 via email.
- 3.19. The Local Planning Authority confirmed safe receipt of the Assumption of Liability Notice on the 13 December 2018 and issued the Liability Notice on the 13 December 2018 (liability reference: LN00004114). The Council's CIL team then confirmed safe receipt of a valid Commencement Notice on the 30 May 2019.
- 3.20. The subsequent CIL Demand Notice was issued on the 30 May 2019. As valid notification of commencement was submitted to the Council prior to any works to implement the permission were undertaken, it is considered this is sufficient to comply with the requirements of the CIL procedures. The total CIL liability for the scheme was £139,977 (index linked) and payment was made by the applicant on 6 June 2019.
- 3.21. The applicant has therefore complied with the relevant requirements of the CIL Regulations 2010 (as amended) in notifying the Council of their intention to commence works through the submission of a valid commencement notice prior to commencement and paying the relevant CIL liability.

Statutory Declaration from Buildmaster Construction Ltd and the Applicant (Appendix 6)

- 3.22. Two declarations from the appointed contractor and the applicant have been provided in support of this application. The first document dated 17 June 2019 provides confirmation that Buildmaster Construction Ltd were employed by Waxflower Properties Ltd (our client) to undertake piling works at 17 Middlefield from the 6 June 2019 to the 7 June 2019 in relation to the planning permission 2015/5241/P.
- 3.23. The declaration confirms that the contract of works included the following:
- Setting out the piling works.
 - Installing 3 piles.
 - Making good surface finishes.
 - Providing attendance of the piling sub-contractor.
- 3.24. The declaration therefore confirms that works were undertaken in accordance with the contract of works with the site owners to lawfully implement the planning permission ref: 2015/5241/P dated 7 July 2016.

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- 3.25. The second document dated 2 July provides confirmation that the applicant instructed Buildmaster Construction Ltd to undertake the piling works in accordance with their contract of works which commenced on the 6 June 2019 and completed on the 7 June 2019.
- 3.26. The declaration therefore confirms that works were undertaken in accordance with the contractor's instruction to implement the planning permission 2015/5241/P dated 7 July 2016 in accordance with S.56(4) of the Town and Country Planning Act 1990 (as amended).

Photo of Works (Appendix 7)

- 3.27. Photos were taken by the appointed contractor on the day of works taking place to implement the permission. The photos are attached as part of this submission and show employees on site creating three piles (in accordance with the contract of works) and making good the surface finishes including clearing any dirt. The piles have been created as the position of the foundations of the approved basement level to the front of the property.
- 3.28. It is considered that the photos confirm works were undertaken lawfully to implement the permission and therefore support the nature of this certificate application.

R.P. Testing Solutions Limited (Appendix 7)

- 3.29. Lastly, a certificate issued by R.P. Testing Solution outlines that the works have passed an on-site integrity test which is also submitted as evidence as part of this certificate application.

4. Evidence for Lawful Use for Implementation

- 4.1. Section 191 (1) of the Town and Country Planning Act 1990 (as amended) sets out that (own emphasis added),

“If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;*
- (b) any operations which have been carried out in, on, over or under land are lawful; or*
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,*

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter”.

- 4.2. On this basis, it is sought to confirm, through the submission of this Certificate of Lawfulness under S191(1.b) of the Town and Country Planning Act 1990 (as amended), that the works undertaken at 17 Middlefield are considered sufficient to safeguard planning permission ref: 2015/5241/P. An application for a certificate under section 191(1) of the 1990 Act must be accompanied by evidence verifying the lawfulness of the works undertaken on the balance of probability.
- 4.3. Having regard to the previous section of this statement, which set out the evidence and information gathered by the applicant, it is clear that the relevant planning permission has been lawfully implemented (planning permission ref: 2015/5241/P).
- 4.4. Confirmation of this implementation is supported by two signed statutory declaration from Buildmaster Construction Ltd and the applicant (Waxflower Properties Ltd). These documents confirm that Buildmaster Construction Ltd were instructed to carry out piling works at the site between the 6 and 7 June 2019 that will support the foundations of the development. These works constitute a material operation as defined by S.56 (4) of the Town and Country Planning Act 1990 (as amended) and therefore demonstrate a material start has occurred on site to implement the permission.
- 4.5. Evidence is provided that demonstrates pre-commencement conditions 4 and 11 have been submitted and approved in writing by Camden Council on 28th May 2019 (ref: 2019/1416/P). These conditions relate to the appointment of a qualified engineer and details of landscaping. On the basis that all pre-commencement conditions were approved prior to the works to implement the permission, it is considered that the applicant has demonstrated the works are lawful and relevant to the permission. The permission is therefore considered to be fully safeguarded.

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- 4.6. Through the evidence submitted, it has been demonstrated that all relevant covenants within the signed Legal Agreement dated 7 July 2016 have been complied with prior to works starting on. Written acknowledgement from the Council has been obtained where required under covenants in the legal agreement to demonstrate that all works that have occurred on the site have taken place post confirmation of all pre-commencement obligations and in turn lawfully. Sufficient notice was also given to the Council's S106 Monitoring Officer notifying the Council of the intention to start works on site which is also in full accordance with the signed legal agreement.
- 4.7. It has been demonstrated that all the required CIL Forms under the CIL Regulations 2010 (as amended) have been completed and submitted to the Council's CIL team. Camden Council's CIL team confirmed that they had received a valid Commencement Notice on the 30 May 2019. Payment of the CIL liability was subsequently made in a timely fashion on the 6 June 2019 by the applicant. This evidence demonstrates that all the requirements of the CIL Regulations were completed and prior to the commencement of works as required. The commencement of the works is therefore considered to be lawfully from a CIL perspective.
- 4.8. Evidence has also been submitted to demonstrate that works to implement the permission took place on the week commencing 3 June 2019 by the appointed contract and in accordance with their contract of works. This should be considered favourably in relation to this certificate application where all evidence is required to demonstrate that on the balance of probability the works have been undertaken lawfully to implement the permission, which has been provided.
- 4.9. In the light of the evidence and on the balance of probability, we consider that it has been sufficiently demonstrated that the lawful implementation of planning permission 2015/5241/P has occurred and that the permission will therefore be safeguarded.

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5. Conclusion

- 5.1. This statement and the information provided in support of this application demonstrates on the balance of probability that planning permission ref: 2015/5241/P has been lawfully implemented and by virtue of section 191(1) (b) of the Town and Country Planning Act 1990 (as amended) is lawful.
- 5.2. This statement and accompanying attachments provide conclusive evidence which confirms that the correct steps have been taken to implement the permission by undertaking a material start on site.
- 5.3. It is for the reasons above that the Council are respectfully requested to grant a Certificate of Lawfulness.

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