

Regeneration and Planning Development Management
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3 June 2020

Our reference
UASW/UJTB/ZHU9.U1

Your reference

Dear Sir/Madam

Planning Permission Reference 2016/5375/P at 16 Avenue Road, London: Application for certificate of lawful development for existing use or development

1. Introduction

- 1.1 On behalf of our client, Lin Zhu, (the "**Applicant**") we enclose with this letter an application for a Certificate of Lawful Existing Use or Development made under section 191 of the Town and Country Planning Act 1990 (the "**Act**") concerning the extant planning permission with reference 2016/5375/P which was granted by the London Borough of Camden (the "**Council**") on 5 June 2017 (the "**Planning Permission**") for the development at 16 Avenue Road, London, NW8 6BP (the "**Property**").
- 1.2 This application seeks confirmation that sufficient works have been undertaken to lawfully implement the Planning Permission.
- 1.3 Pre-application discussions were undertaken with the Council through email correspondence. A description of the proposed works with accompanying drawings was sent to the Council on 21 April 2020 by Nigel Dexter of Savills. Patrick Marfleet responded, on behalf of the Council, on 13 May 2020 confirming that the Council would consider the proposed works to be a material operation that would satisfy the requirement to implement the Planning Permission within three years. Those works have now been carried out.

2. Supporting Evidence

- 2.1 In addition to this letter, this application comprises the following documentation and evidence:

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- (a) annotated drawings showing the implementation works overlaid against the drawings approved under the Planning Permission;
- (b) an email from Patrick Marfleet of the Council confirming to the Applicant's planning consultant (Nigel Dexter of Savills) that the implementation works would constitute a material operation to implement the Planning Permission;
- (c) a letter of intent from Jackson Coles to Knowles (the contractor for the implementation works) confirming the building contract for the works;
- (d) extracts from the contract for the implementation works and associated documentation (sensitive information redacted);
- (e) detailed design calculations for the implementation works;
- (f) a copy of the Council's decision notice discharging all pre-commencement conditions to the Planning Permission;
- (g) a copy of the Council's confirmations that the s106 obligations triggered on or before implementation of the Planning Permission have been discharged;
- (h) the building control initial notice;
- (i) documentation regarding the payment of community infrastructure levy due in respect of the development;
- (j) evidence that the implementation works took place including a record of the approved inspector's, the health and safety advisor's and the structural engineer's site visits, the certificate of practical completion and dated photographs showing the implementation works.

2.2 All evidence is contained within the "Record of Planning Implementation Works" prepared by Jackson Coles LLP and enclosed with this letter (the "**Evidence Bundle**").

2.3 The application fee will be paid following submission of this application.

3. Relevant Planning History

3.1 The Planning Permission was granted for "*the erection of a 2 storey (plus basement and loft), 7 bed dwellinghouse (C3) and associated re-landscaping following the demolition of the existing house.*"

3.2 Works to formally implement the Planning Permission commenced on 26 May 2020 and completed on 29 May 2020.

4. Material Operations

4.1 The works which were undertaken to implement the Planning Permission involved the construction of six piles to form part of the approved basement level, as shown by the drawings on pages 5 to 7 of the Evidence Bundle (the "**Works**").

4.2 Section 56(2) of the Act provides that development is taken to have commenced on "*the earliest date on which any material operation comprised in the development begins to be carried out.*"

- 4.3 Section 56(4) of the Act provides that a "*material operation*" means:
- (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 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.*
- 4.4 The case law on when development has "begun" has established that operations relied upon must be more than de minimis but that the threshold for implementation of a planning permission is otherwise low.
- 4.5 It is considered that the Works are a material operation sufficient to implement the Planning Permission for the reasons listed below.
- 4.6 The Works fall within the definition of "*material operation*" as set out in section 56(4)(a) as the piling is a "*work of construction in the course of erection of a building*".
- 4.7 The Works are the start of the implementation of the Planning Permission because the installation of six piles is sufficiently significant in the context of the development that the Works must be considered to be more than de minimis. Further, the piles have been installed in a location that aligns with the approved plans for the basement level. The drawings at pages 5 to 7 of the Evidence Bundle show this clearly. The Works therefore form part of the development authorised by the Planning Permission.
- 4.8 The Works are not excluded from the definition of "*development*" by section 55(2) of the Act.
- 4.9 As set out in the accompanying evidence, the Council confirmed on 13 May that it would consider the Works described to be sufficient to implement the Planning Permission (see page 9 of the Evidence Bundle). The Works have now been carried out.
- 4.10 The site set-up commenced on 21 May 2020 with the Works commencing on 26 May 2020. The photographs shown at pages 125 – 131 of the Evidence Bundle clearly show the progress made each day as follows:
- (a) 21 and 22 May 2020: site set-up;
 - (b) 26 May 2020: grubbing up paving and substrate, and plant delivery;
 - (c) 27 May 2020: boring for piles 2, 4 and 6 , preparing reinforcement cages, pile casings and reinforcement cages for piles 2, 4 and 6 installed, concrete pour for piles 2, 4 and 6, and piles 2, 4 and 6 completed and capped;

- (d) 28 May 2020: preparation for installation of piles 1, 3 and 5, pile casings and reinforcement cages for piles 1, 3 and 5 installed, and concrete pour for piles 1, 3 and 5; and
- (e) 29 May 2020: piles 1 to 6 completed and capped, Jackson Coles LLP issue Certificate of Practical Completion for the Works (see page 124 of the Evidence Bundle).

- 4.11 The Site Inspection Report at page 113 to 115 of the Evidence Bundle records the approved inspector's inspection of the Property on 28 May 2020. The inspector records that the works had commenced on the "*contiguous piling to front wall*" with piles 2, 4 and 6 having been bored and concreted on 27 May 2020, and piles 1, 3 and 5 bored on 28 May 2020. Further images are included at page 115.
- 4.12 The health and safety advisor's Site Visit Observation Report (pages 117 – 118 of the Evidence Bundle) records that at the time of their visit on 28 May 2020 the final three piles had been driven into the ground, and the cages were planned to be installed later that day.
- 4.13 The structural engineer's Site Inspection Record documenting their visit on 29 May 2020 confirms that the six foundation piles had been installed (pages 120 – 121 of the Evidence Bundle).

5. Pre-commencement conditions

- 5.1 The Planning Permission was granted subject to seven pre-commencement conditions relating to: landscaping (condition 4); sustainable urban drainage (condition 6); trees (condition 12); the proposed combined heat and power unit (condition 17); air quality (condition 18); site drainage (condition 19); and the appointment of a chartered engineer (condition 22).
- 5.2 An application to discharge those conditions was submitted to the Council on 19 February 2020 and given the reference number 2020/0830/P.
- 5.3 The Council issued a decision notice discharging each of those conditions on 15 May 2020. A copy of that notice is shown at pages 45 to 47 of the Evidence Bundle.

6. Section 106 obligations

- 6.1 The Planning Permission is linked to an agreement pursuant to section 106 of the Act dated 5 June 2017 and made between (1) Songyang Fu and Lin Zhu (the "**Owner**"), (2) Credit Suisse (UK) Limited and (3) the Council (the "**Section 106 Agreement**").
- 6.2 The Section 106 Agreement secures planning obligations associated with the development of the Property, including obligations which are triggered by the Works. These obligations are not directly relevant to achieving lawful implementation of the Planning Permission (as this is achieved by discharging the relevant pre-commencement conditions and undertaking a material operation as set out above) however we report on the discharge of the relevant obligations for completeness.
- 6.3 The "*Implementation Date*" is defined in the Section 106 Agreement as "*the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act save for site clearance, relocation of service media, erection of temporary fencing or hoarding*".

6.4 The following obligations in the Section 106 Agreement are triggered by the Works:

Clause Reference	Obligation	Evidence of discharge
Financial		
4.1.1(i) and 4.1.2(i)	Payment of the Construction Management Plan Implementation Support Contribution (£1,140, indexed)	Discharge notice dated 05 May 2020, see pages 52 and 61 of the Evidence Bundle.
4.2.1(i) and 4.2.2(ii)	Payment of the Highways Contribution (£9,013.68, indexed)	
4.5.1(b) and 4.5.2(b)	Payment of the Basement Approval in Principle Contribution (£3,000, indexed)	
Non-financial		
4.1.1(ii) and 4.1.2(ii)	Approval by the Council of the Construction Management Plan	Discharge notice dated 28 April 2020, see page 49 of the Evidence Bundle. See page 50 for the email chain showing that the Council is aware of the updated details regarding the contractor.
4.2.1(ii) and 4.2.2(ii)	Approval by the Council of the Level Plans	Discharge notice dated 30 April 2020, see page 51 of the Evidence Bundle.
4.4.1 and 4.4.2	Approval by Council of the Energy Efficiency and Renewable Energy Plan	Discharge notice dated 22 May 2020, see page 55 of the Evidence Bundle.
4.5.1(a) and 4.5.2(a)	Approval by Council of the Basement Approval in Principle Application	Discharge notice dated 20 May 2020, see page 54 of the Evidence Bundle.
Notice		
5.1	Written notice to the Council on or prior to the Implementation Date specifying that Implementation has taken place or is about to take place	Discharge notice dated 20 May 2020, see page 53 of the Evidence Bundle.
5.7	Notice of each payment to the Planning Obligations Monitoring Officer	Email chain dated 18 March 2020, see pages 56 to 57 of the Evidence Bundle.

7. Community Infrastructure Levy ("CIL")

While compliance with the Community Infrastructure Levy Regulations 2010 is not relevant to the legal question of whether the Planning Permission has been implemented, it is noted that a Commencement Notice was issued to the Council on 21 May 2020 and on 29 May 2020 the Council issued an Acknowledgement Notice confirming that the CIL had been paid. The documents relating to CIL may be found at pages 95 to 108 of the Evidence Bundle.

8. Conclusions

- 8.1 This application seeks a Lawful Development Certificate concerning the implementation of the Planning Permission under section 191(1) of the Act. In determining such applications, the relevant test is on "the balance of probability", having regard to the evidence provided.
- 8.2 The evidence accompanying this letter demonstrates that the Works at the Property described in this letter began on 26 May 2020 (with set up works commencing the week before) and represented a material operation so as to lawfully implement the Planning Permission. As such, for the reasons stated above, we consider that this application should be granted by the Council.
- 8.3 We trust that the above and the enclosed information is sufficient to allow for the application to be registered by the Council. However, should you require anything further, please do not hesitate to contact me at the above office.
- 8.4 We look forward to receiving confirmation that the application has been registered.

Yours sincerely

Alistair Watson*

Taylor Wessing LLP

*Approved by Alistair Watson and sent electronically on behalf of Taylor Wessing LLP