

PD12750/TM/JH/AT

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Planning and Regeneration
London Borough of Camden
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Dear Sir / Madam

**81 AVENUE ROAD, LONDON, NW8 6JD
APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR PROPOSED DEVELOPMENT
TOWN AND COUNTRY PLANNING ACT 1990, SECTION 192**

On behalf of our client, Mrs. V. Mirchandani, we hereby submit an application for a lawful development certificate for proposed development at 81 Avenue Road, NW8 6JD, in relation to planning permission granted on 13 April 2017 (ref. 2016/5197/P) ("the 2017 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 13 April 2017, planning permission was granted (ref. 2016/5197/P) for:

"Erection of a 3 storey, single family dwelling house (Class C3) with accommodation in the roof space and a basement beneath house and part of rear garden, following the demolition of the existing dwelling house"

A copy of the decision notice for the 2017 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..."

Confirmation is sought that the works undertaken to date have lawfully implemented the 2017 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. 13 April 2020). 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 2017 Permission have all been discharged, as follows:

- Condition 8 – Landscaping – ref. 2020/0138/P - Granted 13 March 2020;
- Condition 10 – Tree Protection – ref. 2020/0343/P - Granted 23 March 2020; and
- Condition 12 – Appointment of an Engineer – ref. 2020/0109/P - Granted 5 March 2020.

Copies of the decision notices for all three pre-commencement conditions can be found at **Appendix 1**.

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

Development works have been undertaken which constitute a material operation as defined in Section 56(4)(a), namely work of construction in the course of the erection of a building.

Evidence of Works

Contractors, Knightbuild provided a document titled *Planning Implementation Works* dated 2 April 2020 (**Appendix 2**). This sets out their proposal for the installation of pile foundation works at the Site, in line with the structural engineers proposals approved under the 2017 Permission. This also included a fee proposal for undertaking the works.

The contractors prepared drawing (ref. KB441-SK-800 R01 - **Appendix 3**) which identifies the *Site Set Up* highlighting the locations where the works would take place. This should be read in conjunction with drawing (ref. KB441-SK-801 R01 - **Appendix 4**) which outlines the sequence of works.

This piling work is unequivocally related to the works approved under the planning permission, which identifies a contiguous pile method for construction of the basement level. The driven pile forms part of the retaining wall of the basement to the front of the property. In addition relevant tree protection methods were installed to the front of the property, pursuant to the details approved under the discharge of the planning condition.

An email dated 7 April 2020 confirming instruction from the client to allow Knightbuild to proceed with the works is provided (**Appendix 5**).

Accordingly, mobilisation works and the site setup were implemented during the week commencing 6 April 2020. The works pursuant to the planning permission, **commenced on 9 April 2020** through piling works.

The appointed Building Control Inspector (Royal Borough of Kensington and Chelsea) visited the Site on 9 April 2020 during the piling operations and provided a *Site Inspection Report* for the day which set out their observations of the work

being undertaken. The site inspection report (dated 15 April 2020) is provided with this application and include dated photographs of the works (**Appendix 6**).

An additional set of photographs was provided by the client representative which show the works being undertaken on site during 9 April 2020 (**Appendix 7**).

The above works were undertaken by Knightbuild 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 2017 Permission has been made and therefore the planning permission has been lawfully implemented, within the time period stipulated by Condition 1.

Additional Information

We can confirm that the Community Infrastructure Levy Process has been followed, with the submitted Commencement Notice (dated 6 April 2020) stating a commencement date of 8 April 2020. This is provided at **Appendix 8**. LBC acknowledged receipt of the Commencement Notice on 7 April 2020.

The 2017 Permission was subject to a Section 106 Legal Agreement, dated 13 April 2017. This comprises legal obligations and is not required to confirm lawful commencement of the planning permission. However, the Applicant has been committed to discharging relevant pre-implementation planning obligations prior to the start of works. This includes:

- 4.2(i) - The financial contribution towards the Construction Management Plan fee has been paid.
- 4.2.1(ii) – The Construction Management Plan has been submitted for approval.
- 4.3.1 – The financial contribution towards Highways has been paid.
- 4.3.2 – The Levels Plans have been submitted for approval.
- 4.4.1 – The Energy Efficiency and Renewable Energy Plan has been submitted for approval
- 4.5.1- The Sustainability Plan has been submitted for approval.

The client's commitment to following the required legal and CIL processes also highlights the clients intention to implement the planning permission prior to expiry.

Conclusion

This Application demonstrates that on the balance of probabilities, ‘material operations’ pursuant to the 2017 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 13 April 2017 can be completed at any time.

Application Procedure

The Applicant, Mrs. V. Mirchandani 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-08660089.

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 2017 Permission;
- Associated Documents;
 - Appendix 1- Copy of decision notices for pre-commencement conditions;
 - Appendix 2 - Knightbuild – Planning Implementation Works (2 April 2020)
 - Appendix 3 - Knightbuild – Site Set Up– ref.KB441-SK-800 R01;
 - Appendix 4- Knightbuild – Section A-A – ref. KB441-SK-801 R01;
 - Appendix 5 – Client – Email confirmation for Knightbuild to proceed with the works (7 April 2020);
 - Appendix 6 - The Royal Borough of Kensington and Chelsea – Site Inspection Report (15 April 2020)

- Appendix 7 – Site Photographs; and
- Appendix 8 - CIL Commencement Notice, dated 6 April 2020.

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), James Huish (020 7312 7484 / james.huish@montagu-evans.co.uk) or Aira Temporal (020 7312 7522 / aira.temporal@montagu-evans.co.uk) of this office.

Yours sincerely,



MONTAGU EVANS LLP