

<b>LDC (Existing) Report</b>		<b>Application Number</b>	2021/1368/P
<b>Officer</b>		<b>Expiry Date</b>	
Charlotte Meynell		17/05/2021	
<b>Application Address</b>		<b>Recommendation</b>	
Kingsway House 103 Kingsway London WC2B 6QX		Grant Lawful Development Certificate	
<b>Conservation Area</b>		<b>Article 4</b>	
Kingsway		Basement Development and A1 to A2	
<b>Proposal</b>			
Commencement of works in accordance with condition 1 (within three years from date of permission) of planning permission 2016/3432/P granted on 23/11/2017 and extended until 01/05/2021 under Section 93B of the TCPA 1990 (as amended by Section 17 of the Business and Planning Act 2020) and amended under application ref 2020/4797/P dated 11/11/2020, for (for demolition of 6th and 7th floors and lift overrun and replacement with double mansard roof and set back 8th floor, with roof terrace above; internal reconfiguration to provide additional office (Class B1a) and retail floor space (Class A1/A3).			
<b>Assessment</b>			
<b>1. Background</b>			
<p>1.1 Planning permission ref. 2016/3432/P for “<i>Demolition of 6th and 7th floors and lift overrun and replacement with double mansard roof and set back 8th floor, with roof terrace above; internal reconfiguration to provide additional office (Class B1a) and retail floor space (Class A1/A3)</i>” was granted on 23/11/2017, and amended by 2020/4797/P “<i>Amendment of condition 8 (London Underground Structural Matters) of planning permission 2016/3432/P granted on 23/11/2017 (for demolition of 6th and 7th floors and lift overrun and replacement with double mansard roof and set back 8th floor, with roof terrace above; internal reconfiguration to provide additional office and retail floorspace), to allow the details to be discharged in two stages</i>” dated 11/11/2020.</p> <p>1.2 The expiry date for the planning permission was automatically extended until 01/05/2021 by the Business and Planning Act 2020, which came into effect on 22/07/2020 and temporarily modifies the Town and Country Planning Act 1990 to extend the expiry date of certain planning permissions that were due to lapse during 2020.</p>			
<b>2. Proposal</b>			
2.1 This certificate of lawful development application seeks to confirm that the development permitted by planning permission 2016/3432/P dated 23/11/2017 (as amended under application ref. 2020/4797/P dated 11/11/2020) was implemented in line with the attached			

conditions and the definitions of development outlined within the Town and Country Planning Act 1990. They therefore seek to confirm that the permission remains extant and that the carrying out of the balance of the operational works permitted would therefore not require further express consent.

2.2 To satisfy the above, the applicant is required to demonstrate, on balance of probability that the previous permission was implemented in line with any pre-commencement conditions and planning obligations, prior to the expiry date of the planning permission (01/05/2021).

### **3. Applicant's Evidence**

3.1 The applicant has submitted the following information in support of the applications:

1. Application Form
2. Site Location Plan
3. Cover Letter dated 16/03/2021
4. Letter from LB Camden confirming extension of planning permission expiry date (dated 04/11/2020)
5. Decision Notice for Non-Material Amendment to Condition 8 (dated 11/11/2020)
6. Decision Notice for Condition 8a (dated 01/12/2020)
7. Sealed Deed of Variation to Section 106 Legal Agreement (dated 03/02/2021)
8. CIL Commencement and Demand Notices
9. Draft CMP s106 Discharge Notice
10. Energy Efficiency and Renewable Energy s106 Discharge Notice
11. Financial Obligations s106 Discharge Notice
12. Highway Level Plans s106 Discharge Notice
13. Implementation Notice s106 Discharge Notice
14. Enabling Works Contractor Contract
15. Photo Schedule of Implementation Works
16. Elliott Wood Technical Statement
17. Enabling Works Basement Plan
18. Enabling Works Underpin Detail Drawing
19. Enabling Works Column Detail Drawing
20. Enabling Works Column and Wall Detail Drawing

### **4. Council's Evidence**

4.1 Under planning permission ref. 2016/3432/P dated 23/11/2017, condition 8 was required to be discharged prior to commencement of development. The condition states:

*The development hereby permitted shall not be commenced until detailed design, load calculations and method statements (in consultation with London Underground) for all of the foundations, basement and ground floor structures, or for any other structures below and above ground level, including piling (temporary and permanent), have been submitted to and approved in writing by the local planning authority which:*

- *provide details on all structures*
- *provide load calculations*
- *accommodate the location of the existing London Underground structures and tunnels*
- *accommodate ground movement arising from the construction thereof*
- *mitigate the effects of noise and vibration arising from the adjoining operations within the structures and tunnels.*

4.2 This condition was amended by the non-material amendment application ref. 2020/4797/P

dated 11/11/2020 to allow a two-stage discharge of this condition. The revised condition states:

*a) The development hereby permitted shall not be commenced until detailed design and method statements (in consultation with London Underground) for the enabling and demolition works have been submitted to and approved in writing by the local planning authority which:*

- provide details on all structures;*
- provide confirmation that the loads on the London Underground tunnels will not be altered by the enabling works;*
- provide confirmation that the enabling works will not adversely affect the tunnels with respect to ground movement, noise or vibration.*

*b) Prior to the commencement of any other works to any below or above ground structures, detailed design, load calculations and method statements (in consultation with London Underground) shall be submitted to and approved in writing by the local planning authority which:*

- provide details on all structures;*
- provide load calculations;*
- accommodate the location of the existing London Underground structures and tunnels;*
- accommodate ground movement arising from the construction thereof;*
- mitigate the effects of noise and vibration arising from the adjoining operations within the structures and tunnels.*

4.3 Condition 8 has been partially discharged and the details of the enabling and demolition works have been submitted and approved in writing by the local planning authority in consultation with London Underground under application ref. 2020/4407/P dated 01/12/2020. There are no further conditions which are required to be discharged prior to the commencement of the enabling and demolition works.

4.4 A Section 106 legal agreement was secured which included the following pre-commencement planning obligations: Sustainability Plan, Construction Management Plan, Energy Efficiency and Renewable Energy Plan, Highway Level Plans, Financial Contributions, and Notice of Implementation. A Deed of Variation to the s106 agreement was signed on 03/02/2021 to amend the trigger for the Sustainability Plan obligation to before the commencement of main works on site, which are defined within the Deed of Variation as the façade retention and demolition. All remaining s106 pre-commencement planning obligations have been satisfied and the notice of implementation was secured on 19/02/2021.

4.5 Payment of the Community Infrastructure Levy (CIL) for the planning permission is required upon commencement of development. LB Camden has issued a letter confirming receipt of the commencement notice, and a demand notice requesting payment of the CIL. The full CIL liability was paid by the applicant on 26/02/2021.

4.6 It is therefore accepted that at this point the applicant had no outstanding pre-commencement requirements and would have been able to lawfully implement their permission.

## **5. Assessment**

5.1 The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8,

para 8.12). The relevant test is the “balance of probability”, and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided the applicant’s evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

5.2 The application was submitted on 22/03/2021 accompanied by the applicant’s evidence listed above.

5.3 The submission outlines that implementation works at the site commenced on 01/03/2021 and comprised the partial demolition of the existing foundations and underpinning to the basement floor slab. Evidence of these works was provided in the form of a signed contract with REL Construction Ltd for undertaking the enabling works, a Technical Statement prepared by Elliott Wood LLP which sets out the requirement for the enabling works, technical drawings, and a photo schedule of the underpinning works dated 11/03/2021.

5.4 Section 56 (2) of the Town and Country Planning Act 1990 outlines that:

*“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”.*

5.5 Section 56 (4) further clarifies that in subsection (2) “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 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.”*

5.6 The evidence submitted demonstrates that the underpinning forms the basis of the enabling works package to ensure that both the existing and new structures are supported by an adequate foundation system. As such, it is considered that the works constitute a material operation as defined in The Town and Country Planning Act 1990 as amended, and are in connection with the implementation of the approved permission. The above assessment was made following input from Council’s legal team.

## **6. Conclusion**

6.1 The Council considers that the works carried out in March 2021 constitute a material start of implementing the planning permission 2016/3432/P and that they have commenced before the expiry date of 1<sup>st</sup> May 2021 (as extended by the Business and Planning Act 2020).

## **7. Recommendation**

7.1 Approve certificate of lawfulness existing use