

3 June 2021

savills

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Dear Sir/Madam,

**SECTION 192 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT (CLEUD)**

**15 WEDDERBURN ROAD, LONDON, NW3 5QS**

We have been instructed by our client, Mr Daniel Wagner, to submit this application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) to confirm that planning permission 2017/1006/P has been lawfully implemented and may lawfully be carried out and completed.

The Application

The following documentation is submitted in support of the application:

- Site location plan
- Decision notice dated 15 March 2018
- S106 dated 15 March 2018
- Confirmation of receipt of S106 financial obligations dated 16 December 2020
- Email from the Council confirming receipt of documents relating to discharge of non-financial S106 obligations.
- CIL liability notice
- Email to Council with Commencement Notice attached dated 3<sup>rd</sup> March 2021
- Commencement Notice
- Email confirming receipt of NMA application dated 11<sup>th</sup> March 2021
- Evidence of implementation (including photographs, invoices and design drawings)

Legal Framework

Section 192 (2) of the Town and Country Planning Act 1990 states:

*'If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application'*

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## National Planning Policy Guidance

Under the title 'Lawful Development Certificates – Application and Determination Procedure' in the National Planning Policy Guidance (2014) it states, *“in determining an application for a prospective development under section 192 a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”*.

Lawful development is defined in section 191(2) of the Town and Country Planning Act 1990 however it can be summarised as development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

## Sequence of Events to Implement the Permission

Planning permission (ref: 2017/1006/P) was granted for the following development on 15 March 2018:

*“Change of use from three residential flats to two residential flats (Class C3); extension of lower ground floor level with lightwells and excavation of new basement level; erection of a single storey rear extension at lower ground floor level with terrace and 2 single storey side extensions at lower and ground floors; minor alterations to the north, west and south elevations and front boundary treatment (following the demolition of the existing side conservatory and rear extension)”*.

The planning permission was subject to two pre-commencement conditions and a S106 agreement which has several financial and non-financial obligations attached to it.

## **Pre-commencement conditions**

Condition 1 of the Permission requires the development to be begun no later than the end of three years from the date of the permission, i.e. in advance of 15 March 2021.

Condition 4 of the permission is a pre-commencement condition which states:

*‘No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.’*

Condition 7 of the permission states:

*“Prior to the commencement of works on site, tree protection measures shall be installed in accordance with the Indigo Surveys arboricultural report ref: 17238/A2\_AIA\_Rev A and the tree protection plan ref 13891/TPP/01 Rev A. All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawing as being removed, shall be retained and protected from damage in accordance with these approved protection details.”*

The requisite landscaping details for condition 4 were submitted to the Council in December 2020 (ref: 2020/5854/P) and were validated by the Council on 18 January 2021. As shown in the submitted photographs, the tree protection measures were also installed prior to commencement. An NMA application was submitted to the Council in March 2021, which is discussed below.

### **S106 financial obligations**

- the 'Basement Approval in Principle Contribution' (£1,800) (clause 4.1.1(ii));
- the 'Construction Management Plan Implementation Support Contribution' (£1,140) (clause 4.2.1(i)); and
- the 'Highways Contribution' (£2,409) (clause 4.4.1(i)).

The Council issued a discharge letter on 16 December 2020 confirming that the financial contributions had been received. This letter is enclosed.

### **S106 non-financial obligations**

Non-financial obligations attached to the S106 agreement include:

- Basement Construction Plan;
- Approval In Principle Application (AiP);
- Construction Management Plan; and
- Level Plan proforma and existing and proposed levels plans

All of these documents were submitted to the Council in December 2020. The Council acknowledged receipt of these documents by email dated 17<sup>th</sup> December (enclosed).

### **CIL**

A liability notice was issued to the client on the 5<sup>th</sup> February 2021. Following receipt of this and prior to works starting on site a commencement notice was sent to the Council's CIL team on the 1<sup>st</sup> March 2021 advising that works would commence on the 3<sup>rd</sup> March 2021.

### **NMA**

An NMA application was submitted on 11<sup>th</sup> March 2021 for changes to Indigo Surveys Arboricultural Report ref: 17238/A2\_AIA\_REV.A and Tree Protection Plan ref: 13891/TPP/01 Rev A, which were approved under the original application and under condition 7 were required to be complied with during the construction of the proposals.

During design development it was discovered that the approved tree protection plan did not properly take into account the basement outline and therefore indicated a tree protection zone that excluded any building work directly over a corner of the basement at the front of the property. This is clearly an error otherwise it would not be possible to construct the approved basement in its entirety. Indigo Surveys therefore reduced the tree protection plan in size and amended the method statement to mitigate any potential issues. These changes were detailed within the revised report which was submitted as part of the NMA application.

The proposed change to the tree protection plan is non-material as it has no material impact on the approved development and no new material planning considerations arise. All trees will still be protected during construction which is the intention of condition 7.

The application fee was paid on the 11<sup>th</sup> March 2021 and passed to Camden for validation. Despite numerous follow ups no response has been received from Camden regarding this matter.

### **Implementation Works**

In order to effectively implement a permission (i.e. commence development), any works undertaken must be sufficient to amount to a 'material operation' within the meaning of the Act, which is covered under Section 55.

Section 56 (4) defines a material operation 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...'*

It is considered that the works carried out to implement this permission, which included the excavation and installation of two piles that will form part of the foundations of the approved basement falls under the definition of a material operation as set out within S.56(4)(b) of the Act.



*Fig. 1 – Implementation works carried out on site*

The location of the works is identified on drawing number 276 SK001, and correlates with the approved drawings pursuant to the permission. As a result, the works would relate to (and form part of) the development and are considered to be sufficient to implement the permission prior to the expiration of the planning permission.

As confirmed in the enclosed letter from Built London Ltd, the implementation works were carried out between the 3<sup>rd</sup> and 8<sup>th</sup> March. I.e. before the expiry date.

#### Conclusion

The content of this application provides clear and unambiguous evidence beyond any reasonable doubt (and certainly on the balance of probabilities) that the works:

- Were carried out before the expiry date;
- Comprise the partial installation of the pile design, which formed part of the Development; and
- Were plainly sufficient to have begun the Development in accordance with the Permission.

On this basis, we respectfully request the Council to grant a Lawful Development Certificate (Proposed) in connection to 15 Wedderburn Road, London NW3 5QS.

Should you require further information, please do not hesitate to contact me at any time.

Yours sincerely

A handwritten signature in black ink, appearing to read "Simon Wallis", followed by a small horizontal line.

Simon Wallis  
Director