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80-83 Long Lane
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Via Planning Portal Only

25th October 2021

Dear Sir/Madam

CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING) WITH RESPECT TO THE COMMENCEMENT OF DEVELOPMENT PURSUANT TO PLANNING PERMISSION 2007/6101/P AT 48 QUEENS GROVE.

This is an application under Section 191 (1) (b) of the Town and Country Planning Act 1990 to obtain a Lawful Development Certificate to confirm that planning permission 2007/6101/P has lawfully commenced within the three year time limit for commencement as stated on the decision notice.

The following documents are submitted in support of the application:

- Completed application form;
- Site location plan;
- Site block plan;
- Plans, elevations and sections (previously approved existing);
- Plans elevations and sections (previously approved proposed)
- Work invoices for the development
- Building regulations notices for the development
- Statutory declarations from contractors who commenced the development
- Photographs showing the commencement of the development
- Relevant planning decision notices

Supporting Evidence:

- Appendix 1 – Copy of 2007/6101/P Decision Notice (dated 03 July 2008)
- Appendix 2 – Copy 2011/1892/P Decision Notice (dated 25 May 2011)
- Appendix 3 – Building Regulation Documentation (dated 12 May 2011)
- Appendix 4 – Building Regulations Documentation (dated 19 February 2016)
- Appendix 5 – Email Correspondence Regarding Commencement of Works (dated 23rd May 2011)
- Appendix 6 – Contractor Letter Regarding Work Programme (dated 6th May 2011)
- Appendix 7 – Partial Piling Plan (dated 06 May 2011)
- Appendix 8 – Photographs Showing Commencement of Piling Works
- Appendix 9 – Statutory Declaration Regarding Commencement of Piling Works (dated 04 August 2011)
- Appendix 10 – Photographs Showing Commencement of Roof Removal Works
- Appendix 11 – Statutory Declaration Regarding Commencement of Roof Removal Works (dated 26 May 2011)
- Appendix 12 – Copy of Planning Obligation (dated 2008)
- Appendix 13 – Copy of Planning Obligation Payment (dated 18 May 2011)

The Site

The site comprises a two storey detached dwelling located at the junction between St John's Wood Park and Queens Grove. The application building has a two storey coach house, incorporating a garage, to the rear with an associated vehicular access. The site is located in St. John's Wood Conservation Area.

Planning History

On the 17th of October 2012, planning permission (reference 2011/5298/P) was granted for the erection of mansard roof with dormer windows following demolition of roof to main dwelling, erection of two storey coach house following demolition of existing coach house, erection of single storey link between coach house and main dwelling, excavation to provide basement level to main dwelling, installation of conservatory with associated terrace to rear, creation of two lightwells at rear and side and alterations to windows and doors to side and rear elevations.

On the 31st of October 2012, conservation area consent was granted (reference 2011/5432/C) was granted for the demolition of the roof of existing family dwelling house (Class C3); and demolition and rebuild of existing Coach House.

On the 25th of May 2011, planning permission (reference 2011/1892/P) was granted for Details of hard and soft landscaping, protection to trees during works and green roof pursuant to conditions

4, 6 and 7 of planning permission dated 03/07/08 (ref 2007/6101/P) for rebuilding behind the principle facades of the single family dwelling house (Class C3) including excavation at basement level, dormer windows to roof, erection of a single storey rear extension and alterations to side vehicular access.

On the 24th of November 2009, planning permission (reference 2009/3324/P) was refused for the erection of a three storey residential dwelling house with basement extended underneath rear garden and underground parking (following demolition of existing two storey residential dwelling house and coach house) (NB previous planning permission and conservation area consent granted for partial demolition and rebuild behind front facade of single family dwelling house (Class C3) 2007/6101/P and 2007/6104/C).

On the 24th of November 2009, conservation area consent (reference 2009/3325/C) was refused for the demolition of existing two storey dwelling and coach house (NB previous planning permission and conservation area consent granted for 'Partial demolition and rebuild behind front facade of single family dwelling house (Class C3)' 2007/6101/P and 2007/6104/C).

On the 3rd of July 2008, planning permission (reference 2007/6101/P) was granted, subject to legal agreement, for the demolition and rebuild behind the principal facades of the single family dwelling house (Class C3) including excavation at basement level to provide additional accommodation, dormer windows to roof, erection of a single storey rear extension to connect to new coach house and alterations to side vehicular access.

On the 6th of June 2008, planning permission (reference 2007/6104/C) was granted for the demolition of rear elevation and roof of main house and complete demolition of Coach House.

On the 29th of October 1974, planning permission (CTP/J7/3/C/19658) was granted for the erection of a single storey building in the rear garden incorporating a swimming pool.

Legislative Background and Guidance

Section 191 of the Town and Country Planning Act 1990 (as amended)

Section 191 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) allows applications to a Local Planning Authority for the issue of Certificates of Lawful Use or Existing Development. This provides a statutory mechanism for obtaining confirmation that an existing use of land, operational development, or activity in breach of a planning condition, is lawful and consequently immune from enforcement action.

Planning Practice Guidance Paragraph 009

Planning Practice Guidance at paragraph 009 (Reference ID: 17c-009-20140306), states:

“A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.”

In light of the above, a certificate of lawful use or existing development is not a planning permission. The planning merits of the use, operation or activity in the application are not therefore relevant and planning policies are thus not applicable. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The test in this instance is whether 'on the balance of probability' the applicant has demonstrated that planning permission 2007/6101/P has been lawfully implemented.

The Lawfulness of the Existing Development

As outlined above, the application is not to be considered against local or national planning policy. The question to ask is whether the applicant has demonstrated, on the balance of probability, planning permission 2007/6101/P has been lawfully implemented within the three year timeframe for commencement.

The 'balance of probability' threshold was previously set out in Circular 10/97 (now cancelled), but that threshold is repeated in current Planning Practice Guidance. Further, case law dictates that an applicant's own evidence does not need to be corroborated by "independent" evidence to be accepted (*FW Gabbittas v SSE and Newham LBC [1985]*). If the local planning authority has no evidence of its own, or 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."

Planning permission was granted (reference 2007/6101/P) on the 3rd of July 2008 (Appendix 1). Condition 1 of the planning permission set out that "the development hereby permitted must be begun not later than the end of three ears from the date of this permission" (by the 3rd of July 2011).

The planning permission was subject to a number of conditions. All relevant pre-commencement conditions were discharged on the 25th of May 2011 (application reference 2011/1892/P) including condition 4 (Details of hard and soft landscaping and means of enclosure of all un-built, open areas), condition 6 (Tree protection measures) and condition 7 (Green roof and storm water retention details) (Appendix 2).

Section 56(2) of the Town and Country Planning Act 1990 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.”* Section 56 (3)(b) of the Act defines material operation as *“the digging of a trench which is to contain the foundations, or part of the foundations, of a building”*.

Site set up and preparation works commenced on the 24th of May 2011, in line with the construction programme (Appendix 3,4,5 and 6). Piling works commenced on the 31st of May 2011, 3 piles were excavated at the property in a location required to construct the development that was granted planning permission (reference 2007/6101/P) (Appendix 7 & 8) and as confirmed in the statutory declaration made by Mr Martin Lyes of Dawnbuild Ltd, dated 4th of August 2011 (Appendix 9). On the 26th of May 2011, works commenced with respect to the removal of the roof which was consented by planning permission reference 2007/6101/P and as confirmed in the statutory declaration made by Mr Nigel Moreland of NPM Property Maintenance, dated 26th of May 2011 (Appendix 10 and 11). As such, material operations required to commence the development that was granted planning permission was undertaken prior to the commencement date for the commencement of planning permission 2007/6101/P (3rd of July 2011).

Lord Justice Woolf in *FG Whitley & Sons v SoS [1992]* established that works which constitute a breach of planning control, including in breach of a planning condition attached to a planning permission, will not be effective in commencing the development, rendering such a commencement unlawful. A breach of planning control is defined by section 171A of the Act as:

“carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.”

Subsequently, the works undertaken on the site will only constitute a breach of planning control and thus insufficient to implement planning permission 2007/6101/P if:

- a. They were carried out without the required planning permission;
- b. They were carried out in breach of any condition(s) subject to which planning permission has been granted; or
- c. They were carried out in breach of any limitation subject to which planning permission has been granted.

In this case, planning permission has been granted for the development that has commenced, the development has not commenced in breach of any planning conditions attached to the planning permission. The *I'm Your Man Limited v SOSE [1998]* case set out that the term *“limitation”* in section 171A of the Act refers only to a limitation imposed by a development order which is not applicable in this case.

As a result, the development undertaken at the property does not amount to a breach of planning control. A breach of condition notice could not be rationally served pursuant to section 187A if the Act. In addition, enforcement action could not be taken against the development pursuant to section 172 of the Act. The development undertaken at the site is effective in lawfully implementing planning permission 2007/6101/P.

The planning permission was subject to a planning obligation. Planning obligation is defined in section 106(1) of the Act as an obligation “enforceable to the extent mentioned in subsection (3)”. Section 106 (3) of the Act states “(3) Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection (9)(d)— (a) against the person entering into the obligation; and (b) against any person deriving title from that person.”

In line with the above, a planning obligation is an enforceable contract against the person(s) whom entered into the obligation and any subsequent successor in title. There are 2 principal methods of enforcing planning obligations, injunction, undertaking works on land and recovering the costs of such works.

The regime for enforcing planning obligations is separate from that relating to the enforcement of a planning permission. A breach of a planning obligation does not constitute a breach of planning control (as set out in section 171A(1) of the Act) since it does not form part of the planning permission, or its conditions or is enforceable by a breach of conditions notice or enforcement notice (as set out in section 171A(2) of the Act).

The breach of a planning obligation which requires something to be done prior to the commencement of development does not affect the lawfulness of the implementation of the planning permission because it is a stand – alone document enforced by a separate set of procedures, as described above.

Notwithstanding the above, the planning obligation to which the planning permission was subject, sought to secure a highway contribution of £5,500 “for the carrying out of works in the public highway and associated measures.” The contribution was due “prior to the Implementation Date to pay the Council the Highway Contribution.” A copy of the planning obligation can be found at Appendix 12. The aforementioned highways contribution was paid in full (with indexation) on the 18th of May 2011, prior to the commencement date (24th of May 2011) (Appendix 13).

Summary and Conclusion

The relevant pre-commencement planning conditions to enable the development pursuant to planning permission 2007/6101/P were discharged prior to the development commencing. Condition 3 which requires a sample panel of brickwork to be approved by the Local Planning Authority prior to the relevant works commencing has not been discharged. No part of the development that involves brickwork (thus 'relevant works') has commenced. As such, there is no breach of condition. The development was lawfully commenced between the 24th of May 2011 and 31st of May 2011, through the erection of hoarding to secure the site, preparation of the working area, piling, removal of part of the roof and removal of waste material including soil. The timeframe for commencing the development is set out in condition 1 of the planning permission as three years from the date the decision was issued (by the 3rd of July 2011). This is evidenced by the appendices attached to this letter. The approved development has lawfully commenced within time and subsequently can lawfully be completed. It is considered that any refusal from the Council would be unfounded and it is respectfully requested that a certificate is issued.

I trust the commentary above is clear but please do not hesitate to contact me if you have any queries or if I can offer any further points of clarification.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stuart Minty', written over a light grey rectangular background.

Stuart Minty
Director
SM Planning