

<b>LDC Report</b>	09/08/2022	
<b>Officer</b> Ewan Campbell	<b>Application Number</b> 2022/1326/P	
<b>Application Address</b>  22-24 St Pancras Way London Camden NW1 0NT	<b>Recommendation</b>  Grant Lawful Development Certificate	
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b>		
Confirmation that under 191 (1) (c), the failure to comply with condition 19 and drawing 023 Rev J of planning permission 2006/5700/P granted on the 12/03/2007 is lawful because the play space and roof terrace on the fifth floor of building B (as per drawing 023 Rev J) were not implemented.		

## Site

The application site is located on the north-east side of St Pancras Way and has a site area of 1,980sqm. The site is oblong in shape having long frontages onto both St Pancras Way and the Regents Canal which runs parallel to it along the rear.

St Pancras Way is a one-way Borough Distributor road connecting Camden Town to the north with Kings Cross to the south. It serves the various industrial and large scale storage and distribution uses which predominate in the area as well as performing a through-route function.

In contrast the Regents Canal to the rear presents a much more tranquil setting, being designated a Metropolitan Site of Nature Conservation Importance, a Green Corridor and Public Open Space. The canal towpath which runs along the opposite side of the canal from the application site is a Metropolitan Walk. The entire canal which cuts west to east through the Borough of Camden, along with its towpath and some immediately adjoining land, are all included in the Regents Canal Conservation Area designated in 1974. The application site forms part of this Conservation Area.

## History

Planning permission 2006/5700/P (the "Permission") was granted by London Borough of Camden Council ("LB Camden") in 2007 for the following:

*"Demolition of existing commercial buildings and replacement with a mixed use development of 4-6 storeys, comprising Class B1/B8 use units on the ground floor with 72 residential units (Class C3) on floors above (36x1-bed, 22x2-bed, 10x3-bed and 4x4-bed units)"*

The approved development included provision for amenity space on the first and fifth floor of Building 22 (including children's play space on the fifth floor) and the third and fifth floor of Building 24. The Permission included Condition 19 which required details of the children's play area to be located on floor 5 of Building 24, to be submitted to LB Camden and approved prior to the development commencing. It also required the fixtures and fittings approved to be installed prior to occupation of the development. The condition read as follows:

*19 Details of the children's play space shall be submitted to and approved by the local authority before the development commences. The fixtures and fittings as approved shall be installed prior to occupation of the development and the play area shall be retained and maintained unless otherwise agreed by the local authority.*

*Reason: To ensure that the development makes satisfactory provision for play facilities in accordance with policy C3B of the London Borough of Camden Replacement Unitary Development Plan 2006.*

The Permission was subject to a Section 106 agreement which required payment of £60,000.00 to be paid towards nearby public open space and play facilities to offset a shortfall in open space proposed by the development. This has been paid and all other obligations have been met.

A certificate of completion notice following completion of the building was issued by LB Camden on 11 August 2009 confirming that the Site has been completed. Following completion, the units have continued to be occupied.

Genesis Housing Trust did not provide the amenity space specified in the approved drawings and did not provide the play space required under condition 19. These areas of amenity space were not provided owing to concerns relating to ASB. LB Camden was made aware of the ASB issues at the Site following occupation of the buildings.

Genesis Housing Trust did not discharge condition 19 prior to commencement, did not install the fixtures and fittings relating to the play area and have not therefore retained and maintained the play space in

accordance with condition 19. The breach therefore relates to a departure from the approved drawings and a breach of condition 19. On the basis condition 19 was a part pre-commencement condition and part a prior to occupation condition, we consider that the breach has occurred in two parts. These both occurred before October 2009 when the building was occupied, over ten years ago.

## **Proposal**

The application has been submitted to demonstrate that the failure to comply with condition 19 and the drawing 023 (Rev J) of planning ref 2006/5700/P is lawful under section 191 (1) (c) of the Town and Country Planning Act 1990. That section states:

### ***191 Certificate of lawfulness of existing use or development.***

*(1) If any person wishes to ascertain whether—*

*(a) any existing use of buildings or other land is lawful;*

*(b) any operations which have been carried out in, on, over or under land are lawful; or*

*(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,*

The applicant is seeking to confirm the failure to comply with this condition and drawing is lawful, because the breach would be immune from any future Enforcement Action. The evidence submitted with the application attempts to demonstrate the buildings were not built in accordance with the plans, and that the condition has been continuously breached, over 10 years ago.

A local planning authority can grant a certificate of lawfulness for an existing use of land, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990. Section 191 (3) states that any matter constituting a failure to comply with any condition subject to which permission has been granted is lawful at any time if a) the time for taking enforcement action in respect of the failure has expired; and b) it does not contravene any enforcement action or breach of condition notice in force.

The Planning and Compensation Act 1991 confirms that in this case the relevant time period available to the authority to take Enforcement Action is 10 years, and no current notices exist. The evidence submitted shows that the breach has occurred since August and October 2009, over 10 years ago – and so the breach of condition and failure to provide the terraces and plays-pace in accordance with the plans are probably lawful.

## **Evidence**

The submission is supported by original and as built plans of the development demonstrating the location of the terraces, photos of the terraces currently, Council Tax records, Certification of Completion issued by the Council's Building Control Department and evidence of ASB issues. There is also an aerial note which provides aerial images of the site through the ten year period.

Whilst the documents are not evenly spread over the course of 10 years the Council tax records, along with certificate of completion, demonstrates the breach has occurred over the 10 year required period and the photos show that the terraces have not been implemented as per condition 19 and the proposed plans. The aerial note, alongside this evidence, demonstrates that the breach has probably been continuous throughout the ten year period and that at no point was the play space and terraces erected and used as per condition 19. The council has no record of condition 19 ever being discharged.

Upon confirmation from the Council's Enforcement Manager there are no active enforcement cases in relation to this matter or breach of condition notices. Therefore on the balance of probability it can be considered that, with the evidence provided, that the breach is immune from enforcement action.

## **Conclusion**

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.

The Council does not have any evidence to contradict or undermine the applicant’s version of events. The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the breach has continued for a period of more than 10 years as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Failure to comply with condition 19 and drawing 023 Rev J of planning permission 2006/5700/P granted on the 12/03/2007 is lawful because the details of the play space have not been submitted and the play space and roof terrace on the fifth floor of building B (as per drawing 023 Rev J) were not implemented, and the breach is immune from enforcement action because it has occurred continuously for more than ten years.

**Recommendation: Lawful**



