

<b>LDC (Existing) Report</b>		<b>Application number</b>	2022/5009/P
<b>Officer</b>		<b>Expiry date</b>	
Tony Young		10/01/2023	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
St Peters Vicarage 53 Belsize Square London NW3 4HY			
<b>Conservation Area</b>		<b>Article 4</b>	
Belsize Park		Yes (basements)	
<b>Proposal</b>			
Commencement of works in accordance with condition 1 (within three years from date of permission) of planning permission (2016/2470/P) granted 18/11/2016 for the demolition of existing vicarage and erection of a terrace comprising a replacement 3 bedroom vicarage with 1 bed flat above and a further 2 x 4 bedroom terrace houses with associated hard and soft landscaping.			
<b>Recommendation:</b>		<b>Grant Certificate of Lawfulness</b>	

Planning permission (2016/2470/P) was granted on 18/11/2016 subject to a Section 106 Legal Agreement and conditions. The approved scheme is for the demolition of existing vicarage and erection of a terrace comprising a replacement 3 bedroom vicarage with 1 bed flat above and a further 2 x 4 bedroom terrace houses with associated hard and soft landscaping.

The certificate seeks to establish that works to implement the approved scheme commenced before the permission expired on 18/11/2019, and that the implementation of the scheme is therefore lawful and such development can continue as approved under this permission.

### **Applicant's Evidence**

The applicant has submitted the following information in support of the application:

- Covering Letter from Maven Plan (including various documents numbered 1 to 7 inclusive) dated 17/10/2022;
- Document 1: Community Infrastructure Levy (CIL) Commencement Notice (Form 6) dated 08/11/2019;
- Document 2: Ground floor plan (ref. 100) showing works carried out overlaid on the plan;
- Document 3: Key plan and photographs taken on 13/11/2019 showing works carried out at the site;
- Document 4: Statutory Declaration from Glen Purcell of Purkelly Bros. Ltd. (including various documents) dated 10/10/2022, stating the company's involvement in regard to a material start of works commencing on 11/11/2019;

- Document 5: Correspondence between the Council and Edwards Wilson (architects) dated variously between 12/08/2019 and 15/04/2020, confirming the tree protection methodology;
- Document 6: Decision notice (2019/3497/P) dated 21/08/2019 discharging pre-commencement conditions 3 and 9 attached to planning permission (2016/2470/P); and
- Document 7: Community Infrastructure Levy (CIL) Demand Notice dated 08/11/2019 and payment receipt dated 03/12/2019.

The applicant has also submitted the following plan:

- Site location plan outlining the application site in red (ref. 1984-01-DRG-001).

### **Council's Evidence**

There are 2 pre-commencement conditions attached to planning permission (2016/2470/P) which require details to be submitted and discharged prior to the commencement of works at the application site. These are:

- Condition 3 (Design of building foundations and the layout, with dimensions and levels, of service trenches and other excavations on site in so far as these items may affect trees on or adjoining the site); and
- Condition 9 (Secure and covered cycle storage area for 8 cycles)

Both conditions were discharged on 21/08/2019 under approval reference 2019/3497/P.

It is noted that there are a number of other conditions attached to planning permission (2016/2470/P) which also require details to be submitted and approved in writing by the Council and which remain outstanding, namely, conditions 6 (green roof details); 7 (brickwork sample); 8 (detailed drawings); 10 (water use); 11 (evidence of sustainable design measures); 13 (pv panels) and 14 (accessibility). However, none of these conditions are required to be discharged prior to the commencement of works, but rather, they are required to be discharged either prior to first occupation of the building or before commencement of the relevant part of the works referred to in the condition is begun.

Liability to pay the Community Infrastructure Levy (CIL) arises on the commencement of development in accordance with the terms of the relevant planning permission. The applicant provided a copy of a completed CIL Commencement Notice Form (Document 1) dated 08/11/2019 as required, indicating that notice was given to the Council as collecting authority of the intended development commencement date (stated in this case as being 11/11/2019).

The Council issued a Liability Notice dated 08/11/2019 (Document 7) confirming receipt of a valid Commencement Notice and including a Demand Notice requesting payment of the CIL (within 60 days from the intended commencement date of development). The full CIL liability was subsequently arranged by the applicant on 03/12/2019 (also indicated by Document 7). The Council's Planning Obligations Team have confirmed that full CIL liability was paid by the applicant within the required period.

An associated Section 106 Legal Agreement has a number of planning obligations which are also required to be satisfied on or prior to implementation of the planning permission (2016/2470/P). These include:

- Clauses 4.2.1 and 4.2.2 requiring the submission and approval of a Construction Management Plan;
- Clauses 4.3.1 (i) and 4.3.2 (i) requiring the payment of the Highways Contribution in full; and
- Clauses 4.3.1 (ii) and 4.3.2 (ii) requiring the submission and approval in writing of the Level Plans.

The Council's Planning Obligations Team have confirmed that the planning obligations in regard to the Construction Management Plan and Highways Contribution were both satisfied on 11/11/2019.

However, while the planning obligation in regard to the Level Plans has also been confirmed as satisfied, it is noted as having been discharged on 02/10/2020 which is after the expiry of 3 years specified by Condition 1 of the planning permission (2016/2470/P). As such, it was not discharged in accordance with the wording of the relevant clauses which require compliance with its terms '*on or prior*' to implementation of development (i.e. on or before 18/11/2019). Notwithstanding this, the planning obligation is not considered to be central to the development or to go to the heart of the permission, and therefore, the failure to comply in a timely fashion with the obligation is not considered in itself to render the commencement of development unlawful in this instance.

As such, all necessary pre-commencement planning conditions and implementation planning obligations have been discharged and satisfied, and the required CIL liability notice has also been received (and paid in full), so providing the opportunity under planning permission (2016/2470/P) for works to commence.

## **Assessment**

In regard to applications for a Certificate of Lawfulness, 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, nor any from others, to contradict or otherwise make the applicant's version of events less probable, 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.

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'*.

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.*

The evidence provided by the applicant (specifically Documents 2, 3 and 4 as listed above) is considered to demonstrate that the works commencing on 11/11/2019 (and completed on 14/11/2019) to install 6 x 300mm open auger bored piles to a designed depth and location consistent with the approved permission does constitute a '*material operation*' as defined in the Town and Country Planning Act 1990 (as amended).

## **Conclusion**

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate '*on the balance of probability*' that the works constitute a material start and commenced prior to the expiry of 3 years in compliance with Condition 1 of the planning permission (2016/2470/P). As such, the implementation of the scheme would be lawful, and any work approved under this permission and yet to commence can be completed at any time in the future.

Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events, and as such, a Certificate of Lawfulness can be issued.

**Recommendation:** Grant Certificate of Lawfulness