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Re: Pacific House, Vale Road, London N4 1QE

Planning Ref: HGY/2017/2172 - APP/Y5420/W/19/3220232

Development description: Erection of a third floor roof extension over the main building and three storey extension over the existing single storey projection to provide office (B1) floorspace with separate entrance, in conjunction with the installation of 2 x second floor rear windows and amalgamation of residential flats 26 & 27 into one flat.

18 January 2023

Dear Sam,

You have asked that I set out the applicant's position in relation to commencement of the above development.

The Permission

Permission for the above development was granted 1 July 2019. In accordance with s.91(1) of the TCPA 1990, Condition 1 requires the development authorised to be begun not later than the expiration of 3 years from the date of this permission. Development, therefore, had to be begun not later than 30 June 2022.

An appraisal of the plans concludes that the entire existing single storey projection was to be demolished and replaced by the approved three storey extension. In fact, the approved three storey extension includes a smaller footprint compared to the existing extension.

Therefore, the demolition of the existing single storey projection is comprised in the development.

The Legislative Framework

Section 55 of the TCPA 1990 defines "development" to include "building operations" and provides.

(1A) For the purposes of this Act "building operations" includes—

(a) demolition of buildings;

However, s.55(2)(g) excludes,

(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities....

The Town and Country Planning (demolition - description of buildings) Direction 2021 specifies,

(a) any building the cubic content of which, measured externally, does not exceed 50 cubic metres;

Section 91 of the TCPA 1990 provides.

(1) Subject to the provisions of this section, every planning permission granted or deemed to be granted shall be granted or, as the case may be, be deemed to be granted, subject to the condition that the development to which it relates must be begun not later than the expiration of—

(a) the applicable period, beginning with the date on which the permission is granted or, as the case may be, deemed to be granted;

Section 56 of the TCPA 1990 provides.

(1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—

(a) if the development consists of the carrying out of operations, at the time when those operations are begun;

(b) if the development consists of a change in use, at the time when the new use is instituted;

(c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

(1A) For the purposes of this Act “ building operations ” includes—

(a) demolition of buildings;

(2) 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.

(3) The provisions referred to in subsection (2) are sections 61L(5) and (7), 85(2), 86(6), 87(4), 89, 91, 92, 94 and 108(3E)(c)(i).

(4) 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;

Further, “very little need be done to satisfy” section 56 of the 1990 Act. The section is “a benevolent section which aims at avoiding hardship to a developer who is genuinely undertaking the development”. Thus, the marking out of the line and width of a road with pegs amounts to an “operation” for the purposes of that section (see *Malvern Hills DC v Secretary of State* [1982] JPL 439). The focus is not at all on the quantum of the work undertaken, but whether it is related to the planning permission involved (see *Thayer v Secretary of State* [1992] JPL 264).

Class B of Part 11 schedule 2 of the GPDO allows for the Demolition of the Buildings. However, Article 2 provides that “building” in Class B of Part 11 does not include Part of a Building.

The Operations

Demolition

It is not disputed that the relevant demolition was carried out prior to 30 June 2022. Indeed, below is a Google Street View dated July 2021. It is clear that the building had a cubic content exceeding 50 cubic metres. Other than the planning permission there is no other route permitting the demolition which has taken place.



Trench Excavation

The picture below of the start of the excavation of a trench was taken 05 May 2022



Conditions

The following relevant conditions were imposed.

- 3) *Samples of materials to be used for the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced. Samples should include sample panels or brick types and a roofing material sample combined with a schedule of the exact product references. The approved samples shall be retained in perpetuity unless otherwise agreed in writing by the Planning Authority.*

- 4) *No development shall take place until a detailed scheme for the provision of refuse and waste storage and recycling facilities, as well as secured cycle storage has been submitted to, and approved in writing by the Local Planning Authority. Such as a scheme as approved shall be implemented and permanently retained thereafter.*
- 6) *No development of the extensions hereby permitted shall be commenced until details of the forecourt layout and parking management is submitted to and approved in writing by the Local Planning Authority and shall be retained as such thereafter, unless otherwise approved.*

On 25/11/2020 under planning Ref: HGY/2020/2286 the following decision was issued.

Approval of details reserved by a conditions 3 (materials) and 4 (cycle and refuse storage) of planning permission HGY/2017/2172 (approved at appeal APP/Y5420/W/19/3220232) for extensions to be used as office (B1) use.

Condition 6 which relates to *details of the forecourt layout and parking management* does not go to the *heart of the permission*, and therefore, does not form a pre-commencement condition¹.

Conclusion

The Pre-commencement conditions were all discharged. Demolition comprised in the development started July 2021 within the relevant period. Excavation of a trench started May 2022 within the relevant period. Therefore, the development has clearly been implemented.

I trust this clarifies matters. Please be in touch should you require any further clarification.

Kind regards

Shulem



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10. The worked out areas shall be progressively back-filled and the areas restored to levels shown on the submitted plan or to a level to be agreed by the Local Planning Authority in accordance with a restoration scheme to be agreed by the Local Planning Authority before extraction is commenced.

¹ See R. (on the application of Hart Aggregates Ltd) v Hartlepool BC [2005] EWHC 840 (Admin)