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Robbie McNaugher
The Head of Planning
The London Borough of Haringey

Submitted by way of the Planning Portal

26th May 2023

Dear Sir,

Section 192 Town and Country Planning Act 1990
Certificate of Lawfulness for Proposed Use or Development
Planning permission ref: Ref: HGY/2019/1139 – Condition no. 1
Land to the rear of Jameson Lodge, 58 Shepherds Hill, Hornsey, London, N6 5RW

We hereby apply on behalf of our client, Maycap Limited, the owner of the above-mentioned development site, for a Certificate of Lawfulness for Proposed Use or Development, following the carrying out of works of implementation carried out within the three-year time limit, as required in Condition 1 of the planning permission bearing your ref. no. HGY/2019/1139.

This application comprises the following:

- The Application Form;
- The original decision notice bearing ref. no. HGY/2019/1139 issued on 29 May 2020;
- The decision notice approving the non-material amendment made in respect of condition no. 3, bearing ref. no. HGY/2022/4541 issued on 27 February 2023;
- The decision notice approving the applications submitted in respect of discharging condition nos. 4 and 6 bearing ref. no. HGY/2022/4187 issued on 26 April 2023;
- The decision notice approving the applications submitted in respect of discharging condition nos. 4 and 7 bearing ref. no. HGY/2023/0280 issued on 26 April 2023;
- The location plan;

- A Record of Works to Date document, including dated photographs;
- This covering letter; and
- The fee of £462.

The application seeks approval for a Certificate of Lawfulness certifying the following:

That the planning permission bearing the London Borough of Haringey's planning reference no. HGY/2019/1139 has been lawfully implemented within the time limit set down by condition no. 1 and therefore the completion of the balance of the approved development would be lawful.

The reasons why we believe a certificate on these terms should be issued in respect of this application are set out below:

1. The planning permission bearing ref. no. HGY/2019/1139, (hereafter "the Planning Permission"), was granted by the local planning authority, the London Borough of Haringey, (hereafter "the LPA"), on 29 May 2020. A copy of the decision notice is submitted with this application. The Planning Permission authorised the following form of development:

Partial demolition of existing garages and erection of 1 x 2-bedroom and 1 x 3 bedroom dwellings and associated landscaping works (Class use C3).

2. The Planning Permission was subject to 11 planning conditions. Relevant to this application are condition nos. 1 (time limit for implementation); 2 (approved drawings); 3 (materials); 4 (landscaping); 6 (trees); 7 (construction management plan); and 9 (levels). The significance and status of these conditions are considered below.
3. Condition 1 is the standard time-limit condition. It required that the development approved by the Planning Permission must be begun within 3 years of the date of the issue of the planning permission, that is, by 29 May 2023. Implementation works were carried out earlier this month and these are detailed further below and are shown in our document "Records of Works to Date".
4. Condition no. 2 set out the drawings approved by the Planning Permission. Of particular relevance here are drawing nos. 425.1.0.002 (Existing Block Plan) and 425.(1).1.002E (Proposed Block Plan). It can be seen that a number of garages, including those number 1 to 4, on the Existing Block Plan need to be demolished in order to erect "Unit 2" as shown on the Proposed Block Plan. It can be seen from the "Records of Works to Date" that garages nos. 1 and 2 have been demolished. In our view these works amount to the lawful implementation of the Planning Permission. This point is returned to below.

5. Condition no. 3 relates to materials. Originally drafted it read:

Details And samples of the materials to be used in the external surfaces of the buildings (facing materials, windows/doors, roofing materials, including privacy screens to the balconies) shall be submitted to, and approved in writing by the Local Planning Authority before any above ground development is commenced.

6. By way of a permitted non-material amendment, approved under the LPA's planning ref. no. HGY/2022/4541, this condition was re-drafted and now reads:

"Details and samples of the materials to be used in the external surfaces of the buildings (facing materials, windows/doors, roofing materials, including privacy screens to the balconies) shall be submitted to and approved in writing by the Local Planning Authority before any works are started above ground level on the erection of the new dwellings."

7. The reason for the amendment was to remove any ambiguity that condition no. 3 could be construed as a "pre-start" condition, that is a condition which required a further approval before lawful works of implementation specifically by way of demolition could be carried out. We understand that the details required to be approved under this condition will be submitted in due course.
8. Condition no. 4 required the submission and approval of landscaping details before development could commence. This was a pre-start condition. These details were duly approved by way of decision notice bearing the Council's planning ref. no. HGY/2022/4187 issued on 26 April 2023. Therefore this condition is discharged.
9. Condition no. 6 relates to trees. This condition could be construed as a pre-start condition. This was a pre-start condition. These details were duly approved by way of decision notice bearing the Council's planning ref. no. HGY/2022/4187 issued on 26 April 2023. Therefore this condition has also been discharged
10. Condition no. 7 required the submission and approval of a construction management plan. This is a pre-start condition. These details of this plan were duly approved by way of decision notice bearing the Council's planning ref. no. HGY/2023/0280 issued on 26 April 2023. Therefore this condition is also discharged.

11. Condition no. 9 relates to site levels. This is also a pre-start condition. These details were duly approved by way of decision notice bearing the Council's planning ref. no. HGY/2023/0280 issued on 26 April 2023. Therefore this condition is discharged too.
12. It follows from the above that all the pre-start conditions were discharged by 26 April 2023. Having secured all the approvals necessary to lawfully implement the Planning Permission, our client instructed contractors to carry out work. The Record of Works to Date to date show the works of demolition to garages no. 1 and 2 which were carried out in the week commencing 15 May 2023 and finished no later than 23 May 2023. These works are referred to hereafter as "the Works".
13. It is considered that the Works amount to lawful implementation of the Planning Permission by virtue of Section 56 of the Town and Country Planning Act 1990. The relevant sub-sections are 2, 3 and 4 which read:

*(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;

(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.

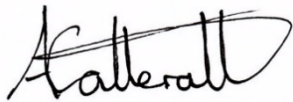
[bold for emphasis].

14. In brief, subsection 56(2) requires that a "material operation" which is "comprised in the development" must be carried out in order to begin a development. Subsection 56(4) sets out a number of operations that are deemed to amount to a "material operation". These include at subsection (aa) any work of demolition of a building. It is considered that the Works carried out

amount to such a material operation in this case. It is also clear that the Works are “comprised in the development”. The block plans referred to above show that in order to erect “Unit 2” a number of garages need to be demolished, including garages 1 and 2. It should also be pointed out the description of development used in the decision notice refers to “partial demolition of existing garages”. It therefore follows that the Works amount to the beginning of the Planning Permission.

15. The Works were carried out prior to 29 May 2023 and therefore comply with the requirement of condition no. 1.
16. The courts have also held that to be deemed lawful such work must be carried out only after any “pre-start conditions” have been discharged (unless an exception applies); see *FG Whitley and Sons Co Ltd v Secretary of State for Wales* [1992] 3 PLR 72. In this case there is no need to rely on an exception as all the pre-start conditions were discharged before the Works were carried out as described above.
17. In summary, the Works are lawful and are a material operation comprised in the development. Therefore, the Works amount to the commencement of the development approved by the Planning Permission. It follows then that the completion of the balance of the development approved by the Planning Permission would be lawful and this means that the application should be approved.

We trust this application is clear and will be duly allowed within the 8 week period allowed for such applications. Please contact this office as soon as possible in the event that you have any questions.
Yours faithfully,

A handwritten signature in black ink, appearing to read 'A. Katherall', with a stylized, cursive script.

Red Works Ltd.

Enc.