



Officer Report

Application Number:	HGY/2023/1621
Application Type:	Lawful development: Existing use
Address:	Ashley House, Ashley Road, London N17 9LZ
Proposal:	Certificate of lawfulness (existing use) for implementation of planning permission HGY/2019/0108 allowed at appeal under APP/Y5420/W/19/3232707, by way of demolition works involving the demolition of brickwork, demolition of areas of the facade and removal of windows.
Case Officer:	Philip Elliott
Valid Date:	19/06/2023
Applicant:	3
Agent:	c/o agent Rosie Williams

RECOMMENDATION

Approve

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2023/1621

Ward: Tottenham Hale

Date received: 19/06/2023

Address: Ashley House, Ashley Road, London N17 9LZ

Proposal: Certificate of lawfulness (existing use) for implementation of planning permission HGY/2019/0108 allowed at appeal under APP/Y5420/W/19/3232707, by way of demolition works involving the demolition of brickwork, demolition of areas of the facade and removal of windows.

Applicant: Notting Hill Home Ownership [NHOO] (Notting Hill Genesis housing association)

Ownership: Private

Officer contact: Philip Elliott

Drawing title/number of plans/approved documents: Site Location Plan (drawing ref. ACF-BPTW-S01-00-DR-A-0050 Rev: P01); Cover Letter dated 1 August 2023; Planning Statement dated 06 June 2023.

2. RECOMMENDATION

Issue a lawful development certificate for the existing building operations.

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

3.1 Approved development

Planning application HGY/2019/0108 was refused by the Council on 10/04/2019. The application was subsequently allowed on appeal (PINS Ref. APP/Y5420/W/19/3232707) on 16/04/2020. The approved development consisted of the following:

- Demolition of existing buildings and erection of a part 6, part 8 storey building to provide 97 residential units (Class C3), 170 sqm of commercial floorspace (Class A1/A3/B1), new public realm, car and cycle parking, and associated works.

3.2 Application description

The application seeks confirmation from the Council, under Section 191 of the Town and Country Planning Act 1990, as amended by Section 10 of the Planning and Compensation Act 1991, that the operations that have been carried out by the applicant in respect of the development as permitted by planning permission HGY/2019/0108 allowed at appeal under APP/Y5420/W/19/3232707 constitute the lawful implementation of the development.

The applicant asserts that the works that have been carried out are lawful and that the planning permission remains extant, on the basis that the permission has already been implemented through works in the form of 'demolition of brickwork, demolition of areas of the façade, and removal of windows' prior to 16 April 2023.

In support of their application the applicant has provided the Council with the following documentation:

- Cover letter;
- Planning Statement;
- Supporting appendices providing background information and evidence of the works undertaken at the site (listed in the Planning Statement);

4. ANALYSIS/ASSESSMENT

Section 191 of the Town and Country Planning Act 1990 (as amended) provides that: (1) If any person wishes to ascertain whether — (b) any operations which have been carried out in, on, over, or under land are lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations, or other matter.

Section 191 (2) states: For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Furthermore, Section 56 of the same Act states that: (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. This Section continues to state in part (2) that development shall be taken to be begun on the earlier date on which any material operation comprised in the development begins to be carried out, and also later confirms in (4) that in sub-section (2) 'material operation' means aa) any work of demolition of a building.

Commencement of Material Operations

Every planning permission must contain a planning condition limiting the time within which the permission can be implemented. If not, the permission expires. For a planning permission to be lawfully implemented, the developer must first ensure that all pre-commencement conditions are complied with (the 'Whitley Principle').

All conditions attached to the original planning permission that required details to be approved prior to the commencement of development were approved on or before 27/03/2023. These included Condition 9 (CEMP), Condition 10 (AQDMP), and Condition 13 (Tree Protection Plan).

A Section 96A Non-Material Amendment application (ref. HGY/2022/4229) was submitted and approved by the LPA on 3 March 2023 to enable changes to be made to Conditions 12, 14, and 15 to allow for site demolition, site clearance, and proposed drainage works to be carried out prior to submission of details.

All other condition details are to be approved following implementation of the permission, or demolition has been removed from the trigger point for the condition. As such, all pre-commencement conditions have been complied with, and no conditions precedent remain outstanding.

In order for the applicant to prove lawful implementation they also need to show that the works carried out constituted a material operation or start and are more than de minimis and that the works were carried out prior to the expiry of the permission.

The applicant carried out demolition works to the Ashley House north-south building. The works included the demolition of brickwork, the demolition of areas of the façade, and the removal of windows. This work commenced on 13 April 2023 and is ongoing. Substantial demolition work was therefore undertaken prior to the expiry of planning permission HGY/2019/0108 allowed at appeal under APP/Y5420/W/19/3232707 on 16 April 2023.

The submission (within the Planning Statement) includes date-stamped images of the works that were carried out. Each of the operations removed a substantial amount of material from the buildings leaving them no longer usable. These works are each material operations that would themselves require planning permission if not comprised within the scope of the planning permission that has been granted at the site. The works were also required to be undertaken by contracted builders and therefore constitute material operations that could not simply be undertaken by an unqualified or non-professional person.

The description of development specifically refers to the "Demolition of existing buildings". Therefore, the planning permission allows for the demolition of the existing buildings on site. A demolition plan was also approved, listed under Condition 2 of the appeal decision notice. The approved drawing showed the extent of existing buildings at the site to be demolished and includes the Ashley House north-south building.

The works shown represent part of the development permitted under HGY/2019/0108 allowed at appeal under APP/Y5420/W/19/3232707 and, therefore, the works carried out constitute a 'material operation' in respect of Section 56 (4) of the Act.

The supporting documentation in Appendices 16 and 17 includes date-stamped photographs and contracts/correspondence between NHHO and the demolition contractor. These documents demonstrate that the material operations were commenced by NHHO on 13 April 2023, in advance of the expiry of the permission on 16 April 2023. Therefore, the material operations were carried out prior to the relevant deadline for implementing the planning permission.

The permission has therefore been lawfully implemented.

Conclusion

Therefore, as the permission has been lawfully implemented, the Council can issue a certificate confirming that the building operations carried out on-site, and as indicated in the plans and documents submitted, constitute a material operation that was carried out lawfully and within the requisite time limit.

5. RECOMMENDATION

Issue a lawful development certificate for the existing building operations.

Registered No. HGY/2019/0108 allowed at appeal under APP/Y5420/W/19/3232707

Site Location Plan (drawing ref. ACF-BPTW-S01-00-DR-A-0050 Rev: P01); Cover Letter dated 1 August 2023; Planning Statement dated 06 June 2023