

Officer Report

Application Number:	HGY/2023/1725
Application Type:	Lawful development: Existing use
Address:	Westbury Court, 423-435 Lordship Lane, London N22 5DH
Proposal:	Certificate of lawfulness of proof to trigger condition 1 (works begin within 3 years) has been implemented via the start of removal of the external timber cladding to rear of the building, constituting Phase 1A of development.
Case Officer:	Josh Parker
Valid Date:	30/06/2023
Applicant:	C/o Agent
Agent:	Shoshannah Stone

RECOMMENDATION

Approve

APPLICATION AND SITE

This application pertains to the application ref: HGY/2017/3679, granted by the 29 June 2020 following appeal APP/Y5420/W/19/3223654| Demolition of existing building and erection of part 1, part 5, part 6 and part 7 storey building comprising commercial uses (use class A1, A2, A3, A4, A5) at ground floor and 50 residential dwellings above. Provision of waste refuse storage, cycle parking, disabled car parking and amenity space, at 423-435 Lordship Lane, Wood Green, London N22 SDH.

PROPOSED LAWFUL WORKS INVESTIGATION

Certificate of lawfulness to prove the lawful trigger of condition 1 (works begin within 3 years) has been implemented via the start of removal of the external timber cladding to rear of the building, constituting Phase 1A of development.

Planning Practice Guidance (PPG) on Lawful Development Certificates, sets out that:

“There is no statutory requirement to consult third parties. It may, however, be reasonable for a Local Planning Authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.” (Paragraph: 008 Reference ID: 17c-008-2014030).

RELEVANT PLANNING LEGISLATION

The application is made pursuant to S192(2) of the TCPA 1990, which allows for a certificate to be issued by the Local Planning Authority to determine if a proposed operation, has been carried out, within the relevant timescale, which constituted a “material operation” to begin the development permitted by a planning permission. The judgment of whether a development has been begun has to be considered against the Act. Section 56(2) of the 1990 Act as amended indicates that, for the purposes of this part of the Act, 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) indicates that “material operation” means, amongst other things, the digging of a trench which is to contain the foundations, or part of the foundations of a building.

PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows.

HGY/2017/3679 was granted by the 29 June 2020 following appeal APP/Y5420/W/19/3223654| Demolition of existing building and erection of part 1, part 5, part 6 and part 7 storey building comprising commercial uses (use class A1, A2, A3, A4, A5) at ground floor and 50 residential dwellings above. Provision of waste refuse storage, cycle parking, disabled car parking and amenity space, at 423-435 Lordship Lane, Wood Green, London N22 SDH.

HGY/2023/0829 Non-Material Amendment to reword the conditions. The rewording of the conditions 4, 5 and 7 to separate a schedule of works from all other demolition and construction requirements.

Planning application HGY/2017/3679 for: Demolition of existing building and erection of part 1, part 5, part 6 and part 7 storey building comprising commercial uses (use class A1, A2, A3, A4, A5) at ground floor and 50 residential dwellings above. Provision of waste refuse storage, cycle parking, disabled car parking and amenity space, at 423-435 Lordship Lane, Wood Green, London N22 SDH. Planning permission was granted on appeal on 29th June 2020 (PINS ref: APP/Y5420/W/19/3223654).

Discharged and notable conditions

Condition 1 Time Limit:

The development hereby permitted shall begin no later than 3 years from the date of this decision.

Officer comments:

This application is assessing the compliance with this condition (1)

Condition 3 Foundations (Pre-commencement):

No development shall take place until a detailed design for the foundations of the building hereby approved has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details

Officer comment:

Discharged through application ref: HGY/2021/2150

Condition 4 Construction Management Plan (Pre-commencement):

No development shall take place, including any works of demolition (except the Phase 1a works in the Phasing Schedule (June 2023)), until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall include details of:

- a) the parking of vehicles of site operatives and visitors;
- b) construction logistics covering delivery, loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;

- d) the erection and maintenance of security hoarding;
 - e) a Tree Protection Plan for retained trees
 - f) wheel washing facilities;
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- The approved Construction Method Statement shall be adhered to throughout the construction period for the development."

Officer comment

Phase 1a has been completed. HGY/2023/0734 still needs to be discharged.

Condition 5 Air quality Control of Dust and Emissions (Pre-commencement):

No development (except the Phase 1a works in the Phasing Schedule (June 2023)) shall take place until a detailed Air Quality and Dust Management Plan (AQDMP), detailing the management of demolition and construction dust, has been submitted and approved in writing by the Local Planning Authority. The plan shall be in accordance with the Greater London Authority's Control of Dust and Emissions Supplementary Planning Guidance document (July 2014) and shall include a Dust Risk Assessment. The development shall be carried out in full accordance with the approved AQDMP.

Officer comment

Discharged through application ref: HGY/2023/0725

Condition 6 Air quality (Pre-commencement):

No development shall take place until a revised air quality assessment including any required mitigation measures and a timetable for their implementation has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in full accordance with the approved details.

Officer comment

Discharged through application ref: HGY/2023/0735

Condition 7 Highway and transport (Pre-commencement):

Notwithstanding the plans hereby approved, no development (except the Phase 1a works in the Phasing Schedule (June 2023)) shall take place until revised highway plans, including details of the stopping-up of the footway, have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved highway plans prior to its first occupation.

Officer comment

Phase 1a has been completed. HGY/2023/0726 still needs to be discharged.

Condition 8 Contamination (Pre-commencement):

Before development commences other than for investigative work:

- a) A revised desktop study shall be carried out which shall include the identification of previous uses, potential contaminants that might be expected, given those uses, and other relevant information (including appropriate reference to the existing on-site sub-station). Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall be produced. The desktop study and Conceptual Model shall be submitted to the Local Planning Authority. If the desktop study and Conceptual Model indicate no risk of harm, development shall not commence until approved in writing by the Local Planning Authority.
- b) If the desktop study and Conceptual Model indicate any risk of harm, a site investigation shall be designed for the site using information obtained from the desktop study and Conceptual Model.

This shall be submitted to and approved in writing by the Local Planning Authority prior to that investigation being carried out on site. The investigation must be comprehensive enough to enable:

- A risk assessment to be undertaken;
- Refinement of the conceptual model; and
- The development of a method statement detailing the remediation requirements. The risk assessment and refined Conceptual Model shall be submitted, along with the site investigation report, to the Local Planning Authority for its written approval.

c) If the risk assessment and refined Conceptual Model indicate any risk of harm, a Method Statement detailing the remediation requirements, using the information obtained from the site investigation, and also detailing any post remedial monitoring shall be submitted to, and approved in writing by, the Local Planning Authority prior to that remediation being carried out on site.

d) Where remediation of contamination on the site is required, completion of the remediation detailed in the method statement shall be carried out and a report that provides verification that the required works have been carried out shall be submitted to and approved in writing by the Local Planning Authority before the development is occupied."

Officer comment

Discharged through application ref: HGY/2023/0736

Condition 9 Noise insulation (Pre-commencement Excludes demolition):

No development excluding demolition and groundworks shall commence until a scheme to protect the dwellings hereby approved from external noise has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in its entirety before any of the dwellings are occupied and the measures shall be retained for the lifetime of the development.

Officer comment

Discharged through application ref: HGY/2021/1017

Condition 10 Materials (Pre-commencement Excludes demolition):

No development excluding demolition and groundworks shall commence until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples.

Officer comment

Discharged through application ref: HGY/2021/3110

Condition 11 Material/design (Pre-commencement Excludes demolition):

Notwithstanding the approved plans, no development excluding demolition and groundworks shall commence until detailed drawings of all elevations of the building hereby approved, including 1:20 plans of brick panels; balcony and canopy details; and window reveals; have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall be retained as such thereafter.

Officer comment

Discharged through application ref: HGY/2021/3212

Condition 14 Safe by Design (Pre-commencement Excludes demolition):

No development excluding demolition and groundworks shall commence until a scheme for reducing the risk of crime and disorder through the design of the development has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme and shall be retained as such thereafter.

Officer comment

Discharged through application ref: HGY/2021/1378

Condition 17 Design (Pre-commencement Excludes demolition):

No development excluding demolition and groundworks shall commence until full details of the proposed finished floor levels of the building hereby approved in relation to the adjoining properties has been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Officer comment

Discharged through application ref: HGY/2021/3216

Condition 20 Sustainability: Green Roof (Pre-commencement Excludes demolition):

No development excluding demolition and groundworks shall commence until details of the proposed living roof have been submitted to and approved in writing by the Local Planning Authority. Details shall include the following:

- a) A roof plan identifying where the living roofs will be located;
- b) Confirmation that the substrates depth range of between 100mm and 150mm across the roof;
- c) Details on the diversity of substrate depths across the roof to provide contours of substrate;
- d) Details on the diversity of substrate types and sizes;
- e) Details on bare areas of substrate to allow for self-colonisation of local windblown seeds and invertebrates;
- f) Details on the range of native species of wildflowers and herbs planted to benefit native wildlife;
- g) Details of the location of log piles / flat stones for invertebrates.

The living roof shall not be used for amenity or sitting out space of any kind. Access shall only be permitted for maintenance, repair or escape in an emergency. The living roof shall be carried out in accordance with the details as approved by the Local Planning Authority.

Officer comment

Discharged through application ref: HGY/2021/3213

Condition 25 DLSL (Pre-occupation):

Prior to first occupation of the development, the windows to the western elevation of the flats located in the south-western corner of each floor of the development hereby approved shall be fitted with obscured glazing. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.

Officer comment

Discharged through application ref: HGY/2021/3217

Condition 32 Sustainability: Energy Strategy (Pre-works):

Prior to their installation, details of the ultra-low NOx boilers for space heating and hot water shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Officer comment

Discharged through application ref: HGY/2021/1573

Condition 33 Noise insulation (compliance):

Noise arising from the use of the new boiler plant and associated equipment shall be no less than 5dB below the lowest background noise level (LA90 15mins) when measured (LAeq 15mins) 1 metre external from the nearest dwelling or noise sensitive premises.

Officer comment

Discharged through application ref: HGY/2021/1379

ASSESSMENT

This is not a planning application and the planning merits are not relevant to this submission. Rather the applicant seeks to prove by the submission of evidence that the works relating to planning permission reference HGY/2017/3679, granted by the 29 June 2020 following appeal APP/Y5420/W/19/3223654 reworded via Non Material Amendment ref: HGY/2023/0829 have commenced and is therefore immune from enforcement action.

Section 56 of the 1990 Act deals with when development of land shall be taken to be initiated and states that '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'.

The applicant has provided photographic evidence in support of this being time stamped to the 28th of June 2023. It is also noted that all pre-commencement conditions were either discharged or reworded in regard to the original application to enable lawful works to take place. Therefore, the commencement of the works would not be in breach of any of the conditions attached to the original permission.

The proposed implementation of planning permission reference HGY/2017/3679, granted by the 29 June 2020 following appeal APP/Y5420/W/19/3223654 reworded via Non Material Amendment ref: HGY/2023/0829 is not considered to constitute development requiring planning permission under Section 56 of the Town and Country Planning Act 1990. The implementation of the above planning permission has commenced no later than 3 years from the date of the original permission.

SUMMARY AND CONCLUSION

There is evidence submitted that suggest that the works for the host application HGY/2017/3679 (PINS ref: APP/Y5420/W/19/3223654) reworded via Non Material Amendment ref: HGY/2023/0829 has been lawfully commenced and therefore condition 1: The development hereby permitted shall begin no later than 3 years from the date of this decision (29th June 2020) has been given effect and is therefore, lawful.

RECOMMENDATION

GRANT CERTIFICATE