

Recommendation Report for Lawful Development Certificate for an Existing Use or Operation or Activity including those in breach of a planning condition.

REF NO: AB/26/26/CLE

LOCATION: 23 Torton Hill Road
Arundel
BN18 9HF

PROPOSAL: Lawful Development Certificate to establish whether planning permission AB/23/24/S73 has commenced.

DESCRIPTION OF APPLICATION

This application seeks a Lawful Development Certificate to establish whether planning permission AB/23/24/S73 has commenced.

SITE AND SURROUNDINGS

The site is 23 Torton Hill Road, a residential plot previously comprising a large, detached dwelling within its substantial grounds. The area is residential in nature and consists of comparable development lining both sides of the road, albeit of varying designs.

Recently, the former dwelling has been demolished.

RELEVANT SITE HISTORY

AB/23/24/S73	Variation of condition imposed under AB/24/23/PL relating condition 2 - approved plans.	ApproveConditionally 23-04-24
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AB/24/23/PL	Demolition of existing detached dwelling and garage and erection of 1 No detached dwelling with rear annexe (resubmission following AB/150/22/PL. This site is in CIL Zone 2 and is CIL Liable as a new dwelling.	ApproveConditionally 09-06-23
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AB/23/24/S73 - This application approved the 'Variation of condition imposed under AB/24/23/PL relating condition 2 - approved plans'.

AB/24/23/PL - This application approved the 'Demolition of existing detached dwelling and garage and erection of 1 No detached dwelling with rear annexe (resubmission following AB/150/22/PL)...'.

AB/24/23/PL was approved conditionally on 09/06/23, and AB/23/24/S73 was approved conditionally on 23/04/24. AB/23/24/S73 is a standalone permission but is limited to the same timeframe for commencement as AB/24/23/PL. This timeframe being the statutory 3-year time limit. As such, the permission granted under AB/23/24/S73 was set to lapse on 09/06/26.

REPRESENTATIONS

Representations Received:

Arundel Town Council

Arundel Town Council - No objection.

No other representations received.

Comments on Representations Received:

Noted.

CONSULTATIONS

Consultations Responses Received:

None.

LEGISLATIVE BACKGROUND

Section 191 to 195 Town & Country Planning Act 1990 and NPPG guidance on CLE's have the effect of requiring these applications to be determined having regard only to the evidence adduced and not planning policy.

Section 192 of the Town and Country Planning Act 1990 states:-

"...(2)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...

(4)If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

Paragraph 006 (Reference ID: 17c-006-20140306) of the Planning Practice Guidance (PPG) states that:-

"The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the

authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence... In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved."

CONCLUSION

The applicant has submitted the following evidence to support the application:

- Application Form.
- AB/23/24/S73 Officer Report and Decision Notice.
- Location Plan.
- Planning Statement.
- Email from Building Control (Dated: 20/05/24).
- Aerial Photograph (Date stamped: 21/04/26).
- Photograph of house part demolished (Undated).
- 2 No. Photographs of cleared site (Undated).

AB/23/24/S73 pertains to an amendment of the original permission, AB/24/23/PL. The description of development for AB/24/23/PL was 'Demolition of existing detached dwelling and garage and erection of 1 No detached dwelling with rear annexe (resubmission following AB/150/22/PL. This site is in CIL Zone 2 and is CIL Liable as a new dwelling.'. As such, the development approved under AB/23/24/S73 included the demolition of the existing dwelling.

AB/23/24/S73 was subject to a standard time limit condition (Condition 1) which reflected timeframe of the original statutory time limit condition imposed under AB/24/23/PL as required under Section 73(5) of the Town and Country Planning Act 1990. This subsection states:

"(5) Planning permission must not be granted under this section for the development of land in England to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which-

(a) a development must be started;..."

Condition 1 of AB/23/24/S73 is as follows:

"The development hereby permitted shall be begun on or before 09/06/2026 (being three years from the date of the original planning permission).

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended)."

On this basis, provided the development was commenced prior to 09/06/26, AB/23/24/S73 has been lawfully commenced.

Section 56(2) of the Town and Country Planning Act 1990 states "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(3) of the Town and Country Planning Act 1990 states "The provisions referred to in subsection (2) are sections 61L(5) and (7), 70D, 85(2), 86(6), 87(4), 89, 90B, 91, 92, 93G, 93H, 94 and

108(3E)(c)(i) and paragraph 13 of Schedule 7A."

Section 56(4) states "In subsection (2) "material operation" means-
(aa) any work of demolition of a building;"

The provisions Section 91 of the Town and Country Planning Act mentioned under Section 56(3) are relevant to this case.

Since Section 56(4) is clear that any work of demolition of a building constitutes a material operation, the demolition of the former building comprises part of the planning permission, and Section 56(2) is clear that the beginning of such a material operation would constitute commencement of the development, the test for this application is whether the demolition of the former building was undertaken prior to 09/06/26.

We begin with the undated photographs of the building being part demolished, and subsequently a cleared site. It is clear that the former dwelling has indeed been demolished and the site cleared.

The aerial photograph is date stamped 21/04/26 in the bottom right corner which shows the date on which the aerial imagery was accessed.

The email correspondence with Arun District Council's Building Control department is also dated 20/05/24, within which it is confirmed that the building has been demolished.

Furthermore, at the time of the site visit (21/05/26) it was clear that the building had been demolished and the site cleared.

The Local Planning Authority have clear and unambiguous evidence confirming that the building was demolished prior to 09/06/26, and there is no evidence to the contrary.

It is recommended that the certificate is granted in accordance with the following terms.

RECOMMENDATION

APPROVE

The development described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town & Country Planning Act 1990 by reason that on 23/04/26, the works approved under AB/23/24/S73 had lawfully commenced, and remain extant and implementable.

FIRST SCHEDULE

Lawful commencement of works approved under AB/23/24/S73, comprising the variation of Condition 2 relating to the approved plans of application reference AB/24/23/PL.

SECOND SCHEDULE

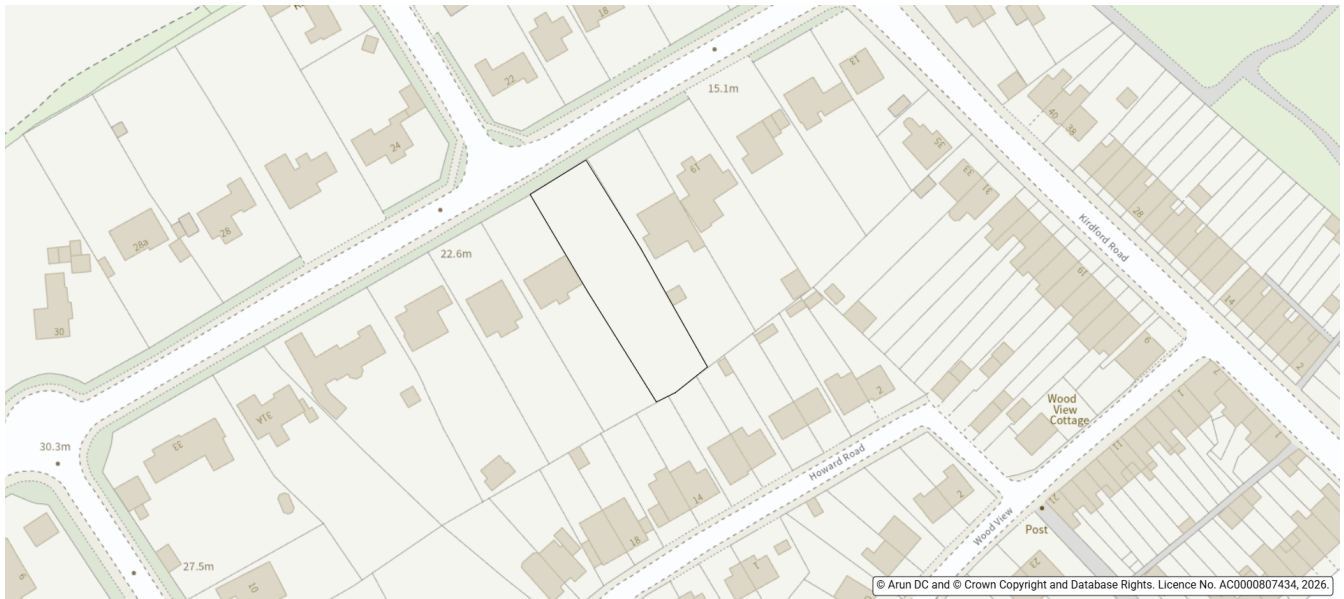
23 Torton Hill Road, Arundel, BN18 9HF.

EXTENT OF USE

Lawful commencement of AB/23/24/S73, in accordance with the following approved plans:

- Location Plan (ID: MPMUP-01152329)(Dated: 29th February 2024).
- Front Elevation (Accepted: 01/03/24).
- Roof Plan (Accepted: 01/03/24).
- Proposed Street View (Accepted: 29/02/24).
- Proposed Ground & First Floor Plan (Accepted: 29/02/24).
- Proposed Side Elevations (Accepted: 29/02/24).
- Proposed Rear Elevation (Accepted: 29/02/24).
- Proposed Site Plan (Accepted: 29/02/24).

AB/26/26/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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