
**LEGAL OPINION IN SUPPORT OF AN
APPLICATION FOR A LAWFUL
DEVELOPMENT CERTIFICATE**

1 INTRODUCTION

- 1.1 This legal opinion is prepared in support of an application for a Certificate of Lawfulness of Proposed Use or Development (“**CLOPUD**”) pursuant to Section 192(1)(b) of the Town and Country Planning Act 1990 (as amended) (“**Act**”). It relates to Manor Nursery, High Street, Angmering, BN16 4AW (“**the Property**”).
- 1.2 The application seeks a CLOPUD to establish the lawful implementation of outline permission A/51/14/OUT granted on 20 March 2015 (“**Planning Permission**”) and approval of reserved matters A/38/18/RES granted on 13 December 2018 (“**Reserved Matters Approval**”) (together referred to as “**Consents**”) by confirming that the works authorised by the Consents would be lawful to continue to be undertaken. The Consents granted approval for:
- 1.2.1 **Planning Permission:** demolition of the existing Manor Nursery Garden Centre and hard standing and redevelopment for 32 dwellings with associated access, public open space and landscaping; and
- 1.2.2 **Reserved Matters Approval:** appearance, landscaping, layout and scale for the Planning Permission.
- 1.3 The Planning Permission was granted subject to condition 2, requiring the approved development to be begun either before the expiration of 5 years from the date of the permission, or before expiration of 2 years from the date of approval of the last of the reserved matters, whichever is the later. In accordance with the Business and Planning Act 2020, the time limit for implementing the Planning Permission was automatically extended to 1 May 2021. The extension was confirmed in writing by Arun District Council by way of letter dated 8 October 2020.
- 1.4 The Consents also contains various pre-commencement conditions, all of which have now been discharged and details of which can be found in the ECE Planning’s Conditions Audit Tracker.
- 1.5 Notice was given to Arun District Council on 5 February 2021 confirming that Roffey Homes Limited intended to commence works at the Property in order to implement the Consents.
- 1.6 In our view, it is beyond doubt that the works undertaken at the Property constitute development, and as a result the evidence supplied in support of this application in the Statutory Declaration of Peter Everett demonstrates, on the balance of probabilities, that the Consents have been lawfully implemented.

2 LEGISLATIVE CONTEXT

- 2.1 Section 192(1) of the Act states:
- “If any person wishes to ascertain whether-*
- ...any proposed use of buildings or other land; or*
- any operations proposed to be carried out in, on, over or under land,*
- would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.”*
- 2.2 The National Planning Practice Guidance (“**NPPG**”) states:
- “if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is*

sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability" (Paragraph 006 Reference ID: c-006-20140306).

- 2.3 Development is commenced when a 'material operation', as defined in the Act has been carried out. Section 56(4) of the Act gives the following (non-exhaustive) examples of material operations:

- "(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 a trench;
- (d) any operation in the course of laying out or constructing a road or part of a road; or
- (e) any change in the use of any land which constitutes material development."

- 2.4 Any works capable of constituting a material operation implement a planning permission, provided that they:

- 2.4.1 relate to the planning permission i.e. they are 'comprised in the development' within the meaning of s56(2) of the Act;
- 2.4.2 are authorised by the planning permission; and
- 2.4.3 involve building operations which are more than de minimis.

- 2.5 The threshold (in terms of the nature and scale of works required) for lawfully implementing a planning permission is relatively low; the works do not have to be particularly costly nor extensive. Courts have generally taken a lenient approach towards what operations suffice in order to treat a planning permission as having been implemented. For example, case law has held the following types of works to constitute lawful implementation of a planning permission:

- 2.5.1 digging of a trench, even where the trench was subsequently backfilled (*High Peak Borough Council v Secretary of State for the Environment and Courtdale Developments* [1981] JPL 366);
- 2.5.2 pegging out of the centre line of a road on a site with permission for residential development (*Malvern Hills District Council v Secretary of State for the Environment* [1982] 1 EGLR 175).

3 LAWFUL IMPLEMENTATION

- 3.1 Following the discharge of conditions, the Consents were implemented at the Property between 10th February 2021 and 12th March 2021. The works comprised:

- 3.1.1 site clearance works including lifting and crushing existing concrete slabs for use as granular fill material;
- 3.1.2 general site clearance;
- 3.1.3 demolition of existing structures; and

3.1.4 the clearance of trees, shrubs and undergrowth.

3.2 Included with this application is a statutory declaration sworn by Peter Everett which includes evidence of the works described above at 3.1 sworn on oath. The works can also be viewed by the case officer on a site visit.

3.3 It is our view that above works comprise lawful implementation as they:

3.3.1 relate to the Planning Permission and Reserved Matters Approval i.e. they are 'comprised in the development' within the meaning of s56(2) of the Act;

3.3.2 fall within a category specifically described within section 56(4) of the Act; and

3.3.3 involve building operations which are more than de minimis.

1.1. The works are therefore sufficient to implement the development within the meaning of section 56 of the Act.

4 CONCLUSION

4.1 The evidence submitted in support of this application demonstrates beyond any reasonable doubt (less still on the balance of probabilities) that the Consents were lawfully implemented before 1 May 2021.

4.2 The Consents are therefore extant such that the development authorised may lawfully be carried on and completed at any time in the future. We therefore invite the Council to grant an LDC pursuant to this application.

Irwin Mitchell LLP

May 2021