

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development**REF NO:** A/105/21/CLP**LOCATION:** Manor Nursery
High Street
Angmering
BN16 4AW**PROPOSAL:** Application for a Lawful Development Certificate seeking confirmation of the lawful implementation of permissions A/51/14/OUT (dated 20th March 2015) and A/38/18/RES (dated 13th December 2018) by confirming that the works authorised by the consents would be lawful to continue to be undertaken.**DESCRIPTION OF APPLICATION**

Certificate of Lawfulness of development for the above site.

Outline planning permission was granted on 20th March 2015 for the demolition of of the existing Manor Nursery Garden Centre and hard standing and the re-development for 32 dwellings with associated access, public open space and landscaping (A/51/14/OUT). The reserved matters (A/38/18/RES) were approved on 13th December 2018 for appearance, landscaping, layout and scale.

This Certificate of Lawfulness application seeks confirmation that it would be lawful to build out 32 dwellings under the 2015 outline planning permission and the 2018 reserved matters approval.

The application comprises the following documents listed below:

- Application form.
- Counsel's Opinion.
- Statutory Declaration relating to the commencement of development at Manor Nursery.
- Letter from ECE Planning (Ref. RH/Let/P1456i): Confirmation of Compliance with Pre-commencement conditions pursuant to A/51/14/OUT and A/38/18/RES at Manor Nursery, High Street, Angmering.

RELEVANT SITE HISTORY

A/38/18/RES	Approval of reserved matters following outline consent A/51/14/OUT relating to appearance, landscaping, layout & scale for demolition of the existing Manor Nursery Garden Centre & hard standing & redevelopment for 32No. dwellings with associated access, public open space & landscaping.	ApproveConditionally 13-12-18
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A/51/14/OUT	Outline Application with Some Matters Reserved for demolition of the existing Manor Nursery Garden Centre	App Cond with S106 20-03-15
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and hard standing and redevelopment for 32 dwellings with associated access, public open space and landscaping. Departure from the Development Plan.

A/166/20/DOC	Approval of details reserved by condition imposed under ref A/51/14/OUT relating to Condition Nos 6 - surface water drainage onto public highway, 21 - surface water drainage and 22 - maintenance & management of SuDs.	DOC Approved 03-02-21
A/86/20/DOC	Approval of details reserved by condition imposed under ref A/51/14/OUT relating to Condition Nos 4 - materials & finishes, 5 - retained trees, 6 - surface water drainage, 7 - car parking 9 - roads, footways & casual parking areas, 10 - Construction Management Plan, 11 - Travel Plan, 12 - archaeological, 13 - ecology, 14 - broadband, 19 - foul water sewerage disposal, 20 - public water supply, 21 - surface water drainage, 22 - SuDs, 23 - refuse & recycling bins, 24 - contamination, 29 - pedestrian & cycle linkages & vehicular access and 30 - materials & finishes	DOC Part Approved 18-08-20
A/85/20/DOC	Approval of details reserved by condition imposed under ref A/38/18/RES relating to Condition Nos 3 - noise mitigation, 5 - electric vehicle charging strategy and 6 - standard assessment procedure (SAP) calculations	DOC Part Approved 04-08-20
A/135/20/DOC	Approval of details reserved by condition imposed under ref A/38/18/RES relating to Condition No 5 - electric vehicle charging strategy.	DOC Approved 06-10-20

REPRESENTATIONS

Representations Received:

CONSULTATIONS

Consultations Responses Received:

LEGISLATIVE BACKGROUND

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

(1) if any person wishes to ascertain whether -

- a. any proposed use of buildings or other land; or
- b. any operations proposed to be carried out in, on, over or under land would be lawful, they may make an application for the purpose to the Local Planning Authority specifying the land and describing the use or operations in question.

(2) 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.

3) A certificate under this section shall -

- a. specify the land to which it relates;
- b. describe the use or operations in question
- c. give the reasons for determining the use or operations to be lawful; and
- d. specify the date of the application for the certificate

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

The Planning Practice Guidance ("PPG") states:

What information must accompany an application for a lawful development certificate?

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. The application must be accompanied by sufficient factual information/evidence for a Local Planning Authority to decide the application, along with the relevant application fee. Application forms can be obtained from the Local Planning Authority and can be completed by the applicant or someone working on their behalf. An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a Local Planning Authority may be justified in refusing a certificate.

This does not preclude another application being submitted later on, if more information can be produced.

The applicant is responsible for providing sufficient information to support an application, although a Local Planning Authority always need 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 the 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 existing use, 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.

A Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a Local Planning Authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

A Local Planning Authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

CONCLUSION

BACKGROUND

In March 2015, the Local Planning Authority received an outline planning application A/51/14/OUT in respect of the demolition of the existing Manor Nursery Garden Centre and hard standing and re-development for 32 dwellings with associated access, public open space and landscaping, in respect of land at Manor Nursery, High Street, Angmering. In this case, A/51/14/OUT was granted permission on 20th March 2015 with a condition (Condition 2) that it 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. Reserved Matters (A/38/18/RES) were approved on 13rd December 2018 relating to the appearance, landscaping, layout and scale of the development.

In accordance with the Business and Planning Act 2020, as the planning permission would have expired on 12th December 2020, the time limit for implementing the planning permission was automatically extended to 1st May 2021. The extension was confirmed in writing by the Local Planning Authority by way of letter dated 8th October 2020.

All pre-commencement conditions imposed on the planning permission and the approval of reserved matters have been discharged.

This application dated 24th May 2021 relates to a Lawful Development Certificate. The Applicant has stated that the use or activity was begun before 1st May 2021.

PROVISION OF SUFFICIENT INFORMATION

The onus is on the applicant to provide sufficient information to support this application.

A Legal Opinion (prepared by Irwin Mitchell LLP) has been submitted with the application which confirms that all of the pre-commencement conditions have been discharged. Details of the discharged conditions have been submitted in ECE Planning's Conditions Audit Tracker (Appendix A), Appendix B - Condition Discharge Notices pursuant to A/51/14/OUT (i.e. A/86/20/DOC & A/166/20/DOC) and Appendix C - Condition Discharge Notices pursuant to A/38/18/RES (i.e. A/85/20/DOC & A/135/20/DOC). Notice was given to the Local Planning Authority on 5th February 2021 confirming that Roffey Homes Limited intended to commence works on site in order to implement the planning permission. Following the discharge of conditions, the site clearance works commenced on site on 10th February 2021. The works comprised:

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

- the clearance of trees, shrubs and undergrowth.

The works have been confirmed in a Statutory Declaration sworn by a Commercial and Operations Manager at Westbrooke Developments Limited, which is a sister company of Roffey Homes Limited. Westbrooke Developments Limited which was instructed by Roffey Homes Limited on 4th February 2021 to commence implementation works; and these works were completed on 12th March 2021.

The Legal Opinion concludes that the works comprise lawful implementation as they:

- 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 Town and Country Planning Act;
- fall within a category specifically described within Section 56(4) of the Act; and
- involve building operations which are more than 'de minimis'.

The works are sufficient to implement the development within Section 56 of the Act.

The Legal Opinion is that it is beyond any reasonable doubt that the works undertaken at the site constitute development, and as a result the evidence supplied in support of this application demonstrates, on the balance of probabilities, that the consents were lawfully implemented before 1st May 2021. The consents are therefore extant such that the development authorised may lawfully be carried on and completed at any time in the future.

SUMMARY

The evidence submitted is considered to be sufficient to demonstrate commencement of the development approved under A/51/14/OUT and A/38/18/RES for the purposes of 'Section 56' of the Town and Country Planning Act 1990 (as amended), which states:

"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;
- (b) if the development consists of a change in use, at the time when the new use is instituted;
- (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

(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.

(4) Section 56(4) of the Act gives the following 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".

The site clearance works, the demolition of existing structures and the clearance of trees, shrubs and undergrowth at Manor Nursery is a material operation within Section 56(2) to (4) of the Act as these works 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 Town and Country Planning Act; they fall within a category specifically described within Section 56(4) of the Act; and involve building operations which are more than de minimis, in accordance with Section 56(4) of the Act. The material operations were carried

out in compliance with the conditions imposed on the planning permission. Therefore, development has commenced on site in compliance with A/51/14/OUT and A/38/18/RES before 1st May 2021.

RECOMMENDATION

It is hereby confirmed that the works authorised by the consents would be lawful to continue to be undertaken and it is recommended that the certificate is approved.

RECOMMENDATION

PP NOT REQUIRED

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 192 of the Town & Country Planning Act 1990 by reason that at the time of submission of this application on 24th May 2021, demolition of the buildings on the site had taken place and outline planning permission A/51/14/OUT and reserved matters approval A/38/18/RES had been lawfully implemented.

The provision of development comprising the demolition of the existing Garden Centre and hard standing and re-development for 32 dwellings with associated access, public open space and landscaping, in accordance with outline planning permission A/51/14/OUT and reserved matters approval A/38/18/RES.

Manor Nursery, High Street, Angmering, BN16 4AW

Implementation of the outline planning permission A/51/14/OUT and reserved matters approval A/38/18/RES.

A/105/21/CLP - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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