
ADVICE

1. I am asked to advise as to whether a lawful development certificate should be issued on application A/151/18/CLE in relation to permission A/27/16/PL on the basis that permission has been lawfully commenced.

Background

2. On 29th January 2016 the Council received an application in respect of the erection of 53 care apartments within Class C2, parking, access, footpath, landscaping & other associated works, in respect of land at Broadlees, Dappers Lane, Angmering, BN16 4EN. Which was validated on 18th February 2016.

3. The application was decided on 9th February 2017 and permission issued.

4. The permission was conditional and the relevant conditions are:

a) Condition 1 which states that:

“The development hereby permitted shall be begun before the expiration of 2 years from the date of this permission.

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

b) Condition 4 requires that “No constructions works shall be carried out until all buildings and structures on the application site at the date of the permission have been demolished, the debris removed from the site and the site cleared.”

c) Condition 7 is a pre-commencement condition in relation to a Construction Management Plan; and

d) Condition 19 is a pre-commencement condition in relation to protection of trees etc.

5. By a decision dated 24th September 2018 the Council discharged condition 7, in relation to the demolition of Broadlees

6. By a decision dated 24th September 2018 the Council discharged condition 19, in relation of the demolition of Broadlees

7. By an application dated 15th November 2018, registered under Planning Reference A/151/18/CLE the Applicant applied for a Lawful Development Certificate.

8. The Applicant stated that the use or activity was begun on 31st October 2018.

9 The relevant legislation is found in:

Section 56 of the Town and Country Planning Act 1990(as amended) (“the Act”)

Section 91 of the Act

Section 191 of the Act

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

Application.

10. In this case planning permission A/27/16/PL was granted on 9th February 2017 with a condition that it be begun within 2 years, namely by 8th February 2019.

11. The Permission was subject to two pre-commencement conditions which the Council has discharged in part, namely in relation to the demolition of “Broadlees” and specifically provided that a new Discharge of Condition Application will be required before construction of the dwellings commences.

12. The property known as Broadlees has been demolished.

13. Section 56(2) to (4) of the Act provides that a planning permission will be commenced within the time limit under Section 91 on the earliest date when a material operation comprised in the permission is carried out and that demolition of a building is a material operation.

14. The Permission, at Condition 4, required that the existing buildings and structures be demolished, debris removed and the site cleared.

15. I am of the opinion that the demolition of Broadlees is a material operation within Section 56(2) to (4) of the Act; was carried out in compliance with condition 4 and following the Discharge of the Pre-Commencement Conditions (7 and 19) and was comprised in the development. Therefore, the Planning Permission A/27/16/PL has been begun within the two year period running from 9th February 2017 to 8th February 2019.

.

Jeremy Cook

Barrister

Pallant Chambers

4th January 2019