



DMH Stallard

Planning Department
Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Date 21st December 2021
Your ref
Our ref 0547/340403-1

Dear Sir/Madam,

46A & 47 Pier Road & Land north of Clifton Road BN17 5LW ("the Site")

Lawful Development Certificate (LDC) (Existing Building Works) to demonstrate that planning permission LU/287/17/PL *'Demolition of existing buildings, change of use of & erection of 1 No. building incorporate office (B1) at ground floor & 8 No. dwellings at first and second floor.'* has been implemented and is extant

Overview

This LDC application is submitted to demonstrate that the planning permission LU/287/17/PL ("the Permission") which was approved on 19/12/17 has been lawfully implemented.

Planning History

The relevant planning history for the Site is as follows:

LU/287/17/PL - *Demolition of existing buildings, change of use & erection of 1 No. building incorporate office (B1) at ground floor & 8 No. dwellings at first and second floor level.*

Approved conditionally 19/12/17

LU/111/21/DOC – *Approval of details reserved by condition imposed under ref LU/287/17/PL relating to Condition Nos 7 - divert public sewers and 8 - foul & surface water sewerage disposal.*

Approved 11/05/21 & 16/06/21.

Griffin House 135 High Street Crawley West Sussex RH10 1DQ DX DX 57102 Crawley



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LU/20/21/DOC – *Approval of details reserved by condition imposed under ref LU/287/17/PL relating to Condition Nos 15 – acoustic report and 18 – contamination.*
Approved 05/03/21

LU/3/21/DOC - *Approval of details reserved by condition imposed under ref LU/287/17/PL relating to Condition Nos 6 - Construction Management Plan and 13 - hard & soft landscaping.*
Approved 03/03/21 & 17/02/21

LU/336/20/DOC – *Approval of details reserved by condition imposed under LU/287/17/PL relating to Condition Nos 12 - materials and finishes and 18 – contamination.*
Approved 08/01/21 & 08/01/21 in Part.

Assessment

Condition 1 of the Permission is the standard condition requiring that the development shall be begun before the expiration of the three year period from the date of the permission i.e. before 19/12/20. By virtue of the Business and Planning Act 2020, which temporarily inserted a new s 93A into the Town and Country Planning Act 1990, the time limit for implementation of the Permission was extended to 1 May 2021.

The Permission also contains planning conditions which require details to be submitted before commencement as follows:

Condition 6 Construction Management Plan - discharged on 3 March 2021.

Condition 7 Divert Public Sewers – discharged on 11 May 2021.

Condition 8 Foul and Surface Water Sewerage Disposal – discharged on 16 June 2021.

Condition 15 Acoustic Report – discharged on 5 March 2021.

Condition 16 Ground Levels – not yet discharged.

Condition 18 Contamination – discharged on 5 March 2021.

Demolition works were carried out in April 2021 in order to implement the Permission. Demolition of a building constitutes a “material operation” by virtue of section 56(4)(aa) of the Town and Country Planning Act 1990 for the purposes of determining when

development begins. Photographic evidence of the demolition work together with the removal of the roof on the existing structure that has been undertaken are provided as part of this application. The photos are date stamped 30th April 2021.

The question for determination in this application is whether the discharge of conditions 7, 8 and 16 after a material operation was carried out renders that operation incapable of implementing the planning permission.

To determine this it is necessary to look at the wording of these conditions to establish whether they are 'true conditions precedent'. A true condition precedent must both prohibit development without compliance with it and also go to the heart of the permission.

Condition 7 states:

Prior to the commencement of the development the developer must advise the local authority (in consultation with Southern Water) of the measures which will be undertaken to divert the public sewers.

There is no requirement under this condition for the approval of the Council to the measures proposed to be undertaken to divert the public sewers. In accordance with the condition the developer submitted details to the Council on 8 April 2021. The condition is therefore complied with and is not a true condition precedent.

Condition 8 states:

Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water.

This condition does not contain a prohibition on development commencing as it refers to "construction of the development". The works that have been undertaken as a material operation to implement the Permission are of demolition not "construction." The condition is not a true condition precedent.

Condition 16 states:

Prior to the commencement of the development hereby approved, a detailed level survey of the site including existing and resulting ground levels and the slab levels of the building the subject of this approval, shall be submitted to and approved by the Local



Planning Authority. The development shall proceed only in accordance with the details thus approved and there shall be no subsequent raising of levels without prior written approval of the Local Planning Authority.

The level survey required by this condition is being submitted alongside this application for the approval of Planning Authority. It is not considered that these are details that go to the heart of the Permission. The details can be approved before any works of construction are carried out. It is not a true condition precedent.

CIL

While a CIL form will accompany this submission in order to fulfil the validation requirement, it is not considered to be applicable to this application, due to its relation to pre CIL planning permission.

Conclusion

For the reasons set out above it is considered that the demolition works carried out on 30 April 2021 were a material operation which implemented the Permission and that there is no breach of any true condition precedent.

We therefore respectfully request that a Certificate of Lawful Development be granted to confirm that planning permission LU/287/17/PL has been implemented and is extant.

Yours faithfully

DMH Stallard LLP