

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

REF NO: LU/3/22/CLE

LOCATION: 46a & 47 & Land north of Clifton Road
Littlehampton
BN17 5LW

PROPOSAL: Lawful Development Certificate for the existing 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.

DESCRIPTION OF APPLICATION

Certificate of Lawfulness of development for the above site.

Planning permission was granted on 19th December 2017 for the 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 (LU/287/17/PL).

This Certificate of Lawfulness application seeks confirmation that it would be lawful to build out the office and dwellings under the 2017 planning permission.

The application comprises the following documents listed below:

- Application form.
- Letter from DMH Stallard (Ref. 0547/340403-1) detailing why it is considered that the planning permission LU/287/17/PL ("the Permission") which was approved on 19/12/17 has been lawfully implemented.
- Dated photographs of the existing buildings on the site being demolished.

RELEVANT SITE HISTORY

LU/2/22/DOC	Approval of details reserved by condition imposed under LU/287/17/PL relating to condition 16-detailed level survey.	DOC Approved 14-02-22
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.	DOC Approved 16-06-21

LU/23/21/DOC	Approval of details reserved by condition imposed under LU/287/17/PL relating to Condition Nos 7 - divert public sewer and 8 - foul & surface water sewerage disposal.	DOC Refused 25-02-21
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	DOC Part 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.	Approve Pre App 03-03-21
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.	DOC Part Approved 08-01-21
LU/136/20/DOC	Approval of details reserved by condition imposed under reference LU/287/17/PL relating to Condition Nos 7 - divert public sewers, 8 - foul & surface water sewerage disposal and 18 - contamination	DOC Refused 31-07-20
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.	ApproveConditionally 19-12-17

REPRESENTATIONS

Representations Received:

Littlehampton Town Council
Littlehampton Town Council - No Objection

Comments on Representations Received:

None

CONSULTATIONS

Consultations Responses Received:**LEGISLATIVE BACKGROUND**

Section 192(2) 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.

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.

Town and Country Planning Act 1990, Section 56 sets out criteria for assessing when development has begun (commenced).
It 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".

CONCLUSION

BACKGROUND

LU/287/17/PL was granted permission on 19/12/197 with a condition (Condition 1) that it be begun before the expiration of 3 years from the date of the permission 19/12/20.

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 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 - discharged on 14 February 2022.

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 works of demolition evidenced in the dated photos demonstrate that the works were commenced within the extended timeframe.

The relevant question for determination in this application is whether the discharge of conditions 7 and 16 which are pre-commencement and condition 8 which is pre construction works, 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 Planning 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 agreed it 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." There is therefore no condition breach.

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 has now been approved. The details have been approved before any works of construction are carried out and the details were based on existing land levels not impacted by the demolition of structures on the site. It is agreed this is not a true condition precedent.

This application dated 10th February 2022 relates to a Lawful Development Certificate. The Applicant has stated that the use or activity was begun before 1st May 2021.

The consent is 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 LU/287/17 for the purposes of 'Section 56' of the Town and Country Planning Act 1990 (as amended) and set out above.

The site clearance works and the demolition of existing structures and at the site is a material operation within Section 56(2) to (4) of the Act as these works relate to the planning permission 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 LU/287/17/PL before 1st May 2021.

RECOMMENDATION

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

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 192 of the Town & Country Planning Act 1990 by reason that at the time of submission of this application on 10th February 2022, demolition of the buildings on the site had taken place and planning permission LU/287/17/PL has been lawfully implemented.

FIRST SCHEDULE

The provision of development comprising the 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 in accordance with planning permission LU/287/17/PL.

SECOND SCHEDULE

46a & 47 Pier Road & Land north of Clifton Road, Littlehampton, BN17 5LW.

EXTENT OF USE

Implementation of planning permission LU/287/17/PL.

LU/3/22/CLE - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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