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31st August 2023

Dear Sir/Madam,

Land West of Forest Lane, Forest Lane, Chippenham, SN15 3PX
Application for a Certificate of Lawfulness of Existing Use or Development under Section 191 of the Town and Country Planning Act 1990 (as amended) pursuant to Planning Permission Ref. 17/05672/FUL

On behalf of Chippenham Limited, please find enclosed an application for a Certificate of Lawful Existing Use or Development submitted via the Planning Portal (ref. PP-12350092), which seeks the Council's confirmation that works undertaken on 30th June 2021 at Land West of Forest Lane, Chippenham, benefited from and lawfully implemented planning permission ref. 17/05672/FUL.

Submission Documents

In addition to this Covering Letter, this application comprises of the following documents:

- Completed Application Form, prepared by Town Quay Developments ('TQD');
- Site Location Plan ref. P000 Rev. A at a scale of 1:1,250;
- Statutory Declaration, prepared by Charles Russell Speechlys LLP ('CRS') and signed by Alex Hunt of TQD, together with the following, appended information:
  - Exhibit AH1 – Site Location Plan ref. P000 Rev.A;
  - Exhibit AH2 – Decision Notice for planning permission ref. 17/05672/FUL;
  - Exhibit AH3 – Pre-Commencement Conditions Discharge Notice ref. PL/2021/04807;
  - Exhibit AH4 – Pre-Commencement Conditions Discharge Notice ref. PL/2021/04853;
  - Exhibit AH5 –Date and Time Stamped Photos of Implementation Works;
  - Exhibit AH6 – Approved Plan Rev. P101 Rev.H 'Proposed Site Plan';
  - Exhibit AH7 – Approved Plan Rev. P104 Rev.B 'Proposed 3 Bed GF & FF';
  - Exhibit AH8 – Implementation Works Plan ref. W01604-220 Rev.P01 'Rear Wall Footing Plot 3';
  - Exhibit AH9 – Works Order between TQD and David Horton Contractors Ltd.
- CRS Legal Advice Letter dated 30th August 2023.

The requisite application fee of £2,836 (including Service Charge and VAT) has been paid via the Planning Portal at the time of submission.

Background Context

Planning permission ref. 17/05672/FUL ('the Permission') was granted at Appeal on 3rd July 2018 for the following:

'*The erection of 6 no. residential units including landscaping, highways layout and related works*'

As noted above, the Decision Notice and approved drawings relevant to the implementation works are appended to the enclosed Statutory Declaration.

Condition 1 attached to the Permission states:

'*The development hereby permitted shall begin not later than 3 years from the date of this decision.*'

On this basis, it is understood that the Permission was due to expire on 3rd July 2021.

Legal Context for Implementation

Section 56 of the Town and Country Planning Act 1990 (as amended) ('the Act') defines the commencement of development as follows:

"(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).'

Section 91 of the Act provides that every planning permission granted shall be subject to a condition that the development to which it relates must be 'begun' not later than the expiration of three years beginning with the date on which permission is granted (as per Condition 1 attached to the Permission). Section 56(2) provides that for the purposes of Section 91 of the Act: "*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.*"

Section 56(4) sets out what a material operation means, as below:

"(4) In subsection (2) "material operation" means—
"(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 any such trench as is mentioned in paragraph (b);
"(d) any operation in the course of laying out or constructing a road or part of a road;
"(e) any change in the use of any land which constitutes material development.

Works to Implement The Permission

The works undertaken on 30th June 2021 included the installation of a strip foundation with a length of 6m within a trench of no less than 1,450mm depth and 1,000mm width in the position of the rear wall footing of the dwellinghouse on "Plot 3".

To evidence the above works undertaken on 30th June 2021 to implement the Permission, a Statutory Declaration is enclosed, signed by Alex Hunt, Managing Director of TQD, and the appointed Development Manager for the Site since 2016. Date and time stamped photos evidencing the works are appended to the Statutory Declaration. These works are clearly referable to the Permission in that they are shown on the relevant Approved Drawings, which are also appended to the enclosed Statutory Declaration.

The works undertaken before expiry of the Permission clearly fall within the definition of a 'material operation', as defined by Section 56(4)(b) of the Act: '*the digging of a trench which is to contain the foundations, or part of the foundations of a building*'. As set out in the Legal Advice Letter prepared by Charles Russell Speechlys LLP (which is enclosed as part of this application), there can be no dispute that the works were sufficient to lawfully implement the Permission.

Pre-Commencement Conditions

The Applicant submitted two Approval of Details Applications to discharge pre-commencement conditions. The first Application was submitted on 5th May 2021 to discharge pre-commencement conditions 3, 11, 12 and 15 (ref. PL/2021/04807). The second application was submitted on 7th May 2021 to discharge pre-commencement condition 4 (ref. PL/2021/04853). Of note, both applications were submitted before the above implementation works were undertaken and before the Permission was due to expire.

Both of these Applications were Approved and the pre-commencement conditions discharged by the Council on 12th July 2021 and 24th June 2022, respectively (Decision Notices appended to the enclosed Statutory Declaration).

The Legal Advice Letter prepared by Charles Russell Speechlys LLP (which is enclosed as part of this application) provides and assesses the details of this case and concludes the set of circumstances sits squarely within the exception to the '*Whitley principle*' derived from the Court of Appeal '*Whitley*' case itself. The Legal Advice Letter therefore concludes that the works undertaken pursuant to the Permission became lawful and sufficient to have lawfully implemented the Permission on 24th June 2022.

Summary

On the above basis, it is considered that a material operation to lawfully implement the Permission has been undertaken to satisfy the requirements for a Certificate of Lawful Existing Use or Development to be issued accordingly.

We trust that the enclosed information is sufficient to allow the application to be registered and look forward to receiving your confirmation of receipt and validation. Please contact me should you require any further information or clarification regarding the above.

Yours sincerely,

[redacted]

Dan Fyall MRTPI
Planning Manager
For and on behalf of Town Quay Developments Limited