

Delegated Report

Lawful Development Certificate (Existing)

Application no:	20240591
Location:	Bridge Bar And Club, 24 Stone Street, Gravesend, Kent, DA11 0NP
Proposal:	Application for a Lawful Development Certificate in respect of the existing works constituting implementation of Planning Permission Reference number 20211196 - Application for a minor material amendment to planning permission reference no. 20191187 for Demolition of outbuildings, excavation of soil to form a lower ground and upper ground floor B1 use, unloading bay and refuse areas with construction floors 1 to 4 providing a total of 3no. one bedroom self-contained flats and 11no. two bedroom self-contained flats and associated external works to allow alterations to the main entrance from Rathmore Road to Athboy Road and amendments and substitution to approved plans.
Applicant:	Mr Lakh Kallar
Site Visit	N/A Desktop Assessment

This application is made under section 191 of the Town and Country Planning Act (1990) (as amended) for a Certificate of Lawfulness to confirm the implementation of planning permission reference 20211196.

Plans & Documents

- Application Form – dated 01 July 2024
- Covering Letter by Savills – dated 01 July 2024
- Supplementary Information – HSE Notification of Construction Report
- Supplementary Information – STROMA Building Control Report – dated 13 June 2024
- Supplementary Information – STROMA Site Inspection Report – dated 22 May 2024
- Supplementary Information – STROMA Building Control Invoice (28 May 2024)
- Supplementary Information – Confirmation Email of Monies Paid to GBC
- Supplementary Information – GBC Invoice (dated 21 May 2024)
- GBC Decision Notice – 20231206
- GBC Decision Notice – 20231207
- GBC Decision Notice – 20231222
- GBC Decision Notice – 20231230
- GBC Decision Notice – 20231273
- GBC Decision Notice – 20240209
- GBC Decision Notice – 20240255
- GBC Decision Notice – 20240300
- Drawing no. 5232-SLP – Rev. C – Site Location Plan (scale – 1:1250)
- Drawing no. 3582/E/01 – Existing Site Plan (scale – 1:200)
- Drawing no. 3582/C/01 – Rev. C – Proposed Site Plan (scale – 1:200)

- Drawing no. 5232-D1.11 – Rev. G – Proposed Lower Ground Floor

Relevant Planning History

Reference	Description	Decision	Decision Date
20240300	Application for the approval of conditions 7 and 21 attached to planning permission reference number 2011196 relating to details of (7) sustainable surface water drainage scheme and (21) foul surface water sewage disposal.	APPROVAL OF DETAILS	04.06.2024
20240255	Application for the approval of condition 9 and 18 attached to planning permission reference number 20211196 relating to details of surface finishes for roads and footpaths (9) and full details of the open space, the design and landscaping of all un-built areas of any part of the development (18).	APPROVAL OF DETAILS	10.05.2024
20240209	Application for the approval of conditions 6,10 and 14 attached to planning permission reference number 20211196 relating to a suitable sound insulation assessment (6), details of all proposed external lighting (10) and impact studies of the existing water supply infrastructure shall be submitted (14).	APPROVAL OF DETAILS	24.04.2024
20240293	Application for a non-material amendment to planning permission reference number 20211196 to amend the wording of conditions 8 (Highway works) and 16 (Plant equipment) to allow details to be submitted and approved prior to commencement of works above ground.	PERMITTED NMA	23.04.2024
20231206	Application for the approval of condition 4 and 11 attached to planning permission reference number 20211196 relating to a comprehensive Code of Construction Practice, covering the environmental impacts from the clearance/construction phase of this development and full details of the phasing of the development.	APPROVAL OF DETAILS	12.04.2024
20231273	Application for the approval of conditions 3 and 20 attached to planning permission reference number 20211196 relating to details of (3) All features identified as being historic and archaeological interest and (20) Archaeological work.	APPROVAL OF DETAILS	05.02.2024
20231222	Application for the approval of condition 17 attached to planning permission reference number 20211196 relating to an assessment of the impacts of the development on radio, television and satellite reception in the vicinity of the site, including appropriate mitigation if necessary.	APPROVAL OF DETAILS	26.01.2024

20231207	Application for the approval of condition 12 attached to planning permission reference number 20211196 relating to full details including samples of all external facing materials and fenestration to be used on the development.	APPROVAL OF DETAILS	24.01.2024
20211196	Application for a minor material amendment to planning permission reference no. 20191187 for Demolition of outbuildings, excavation of soil to form a lower ground and upper ground floor B1 use, unloading bay and refuse areas with construction floors 1 to 4 providing a total of 3no. one bedroom self-contained flats and 11no. two bedroom self-contained flats and associated external works to allow alterations to the main entrance from Rathmore Road to Athboy Road and amendments and substitution to approved plans.	PERMITTED	14.02.2022
20191187	**REVISED PLAN** Demolition of outbuildings, excavation of soil to form a lower ground and upper ground floor B1 use, unloading bay and refuse areas with construction floors 1 to 4 providing a total of 3no. one bedroom self-contained flats and 11no. two bedroom self-contained flats and associated external works.	PERMITTED	11.06.2021

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Legislation

The Town and Country Planning Act (1990) (as amended) Section 191: Certificate of Lawfulness of existing use or development.

Procedure for determination

This Lawful Development Certificate seeks confirmation from the Local Planning Authority that planning permission reference 20211196 has been lawfully implemented. The implementation of the development would involve the scheme meeting the definition of development, as set out in section 55(1) of the Town and Country Planning Act 1990 (as amended) being *“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”*. The commencement of any development on the site would, in this instance, have been before the full discharge of pre-commencement conditions attached to the original permission and meeting the requirements of the Section 106 legal agreement (S106).

Nonetheless, to confirm the lawful status of the development, the Local Planning Authority need to be satisfied that all pre-commencement conditions have been discharged, the requirements of the S106 have been met and the development has been implemented before the expiration of three years.

Planning Appraisal

This application is for a Lawful Development Certificate and not for a planning permission. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests with the applicant and the evidence submitted must be sufficiently precise and unambiguous to enable the Local Planning Authority to understand exactly what is involved. The decision must be made on the balance of probability. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009).

The nature of this Lawful Development Certificate, seeking confirmation of implementation, means that Section 56 of the Town and Country Planning Act 1990 is relevant. Section 56 states that 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).*

The provisions of this section go on to state that 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. Subsection 4 of Section 56 of the Town and Country Planning Act 1990 considers a material operation to mean any of the following:

- (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.*

The applicant is thus making the argument that the works carried out at the site to date have lawfully implemented the approved development.

Applicants Evidence

The applicant has provided the following documents as evidence that works commenced on site prior to the three year expiration date of the approval being 11 June 2024:

- Supplementary Information – HSE Notification of Construction Report
- Supplementary Information – STROMA Building Control Report – dated 13 June 2024
- Supplementary Information – STROMA Site Inspection Report – dated 22 May 2024
- Supplementary Information – Confirmation Email of Monies Paid to GBC
- Supplementary Information – GBC Invoice (dated 21 May 2024)

The evidence provided demonstrates that trenches were excavated on site with works completed 17 May 2024. The building control reports from STROMA provide photographic evidence of the trenches, which correspond with the details within the Covering Letter showing the location of the trenches to be within the redline plan and would relate to the development.

In terms of Section 56 of the TCPA 1990, the digging of the trench meets b) as it is for the foundations, and would be classed as a material operation. Therefore, the trenches are considered to constitute operational development in line with Section 56 and is connected to the heart of the permission.

Further to the evidence of the implementation of the development through excavation of the foundation trenches, the applicant has provided evidence of the payment of monies related to the S106 legal agreement through emails and an invoice from GBC. This is sufficient to demonstrate that the financial requirements of the S106 for GBC, being the SAMMS and Leisure payments to a total of £21,626.28, has been made.

Council Evidence and Assessment

The granted minor material amendment (ref. 20211196) required the development to have begun not later than 11 June 2024. This permission included 15no. pre-commencement conditions. The following applications discharged and amended the wording of the pre-commencement conditions, with the final details being approved 04 June 2024.

- 20240300 – Application for the approval of conditions 7 and 21 attached to planning permission reference number 2011196 relating to details of (7) sustainable surface water drainage scheme and (21) foul surface water sewage disposal – APPROVAL OF DETAILS – 04.06.2024
- 20240255 – Application for the approval of condition 9 and 18 attached to planning permission reference number 2011196 relating to details of surface finishes for roads and footpaths (9) and full details of the open space, the design and landscaping of all un-built areas of any part of the development (18) – APPROVAL OF DETAILS – 10.05.2024
- 20240209 – Application for the approval of conditions 6,10 and 14 attached to planning permission reference number 2011196 relating to a suitable sound insulation assessment (6), details of all proposed external lighting (10) and impact studies of the existing water supply infrastructure shall be submitted (14) – APPROVAL OF DETAILS – 24.04.2024
- 20240293 – Application for a non-material amendment to planning permission reference number 2011196 to amend the wording of conditions 8 (Highway works) and 16 (Plant equipment) to allow details to be submitted and approved prior to commencement of works above ground – PERMITTED NMA – 23.04.2024
- 20231206 – Application for the approval of condition 4 and 11 attached to planning permission reference number 2011196 relating to a comprehensive Code of Construction Practice, covering the environmental impacts from the clearance/construction phase of this development and full details of the phasing of the development – APPROVAL OF DETAILS – 12.04.2024
- 20231273 – Application for the approval of conditions 3 and 20 attached to planning permission reference number 2011196 relating to details of (3) All features identified as being historic and archaeological interest and (20) Archaeological work – APPROVAL OF DETAILS – 05.02.2024

- 20231222 – Application for the approval of condition 17 attached to planning permission reference number 20211196 relating to an assessment of the impacts of the development on radio, television and satellite reception in the vicinity of the site, including appropriate mitigation if necessary – APPROVAL OF DETAILS – 26.01.2024
- 20231207 – Application for the approval of condition 12 attached to planning permission reference number 20211196 relating to full details including samples of all external facing materials and fenestration to be used on the development – APPROVAL OF DETAILS – 24.01.2024

Therefore, the Local Planning Authority is satisfied that all pre-commencement conditions were approved prior to the application expired.

Lastly, the evidence provided by the applicant relating to the payment of monies for the S106 legal agreement are corroborated by the case file.

Conclusion

The applicant's information which has been submitted is sufficient and the relevant test is on the balance of probability. On the balance of the information available the development would be considered to have been implemented in accordance with section 56 of the Town and Country Planning Act 1990.

Recommendation

Grant LDC

Case Officer:	Mr Ethan Bonthron	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	12 th September 2024	Dated:	13 September 2024