

Supporting Statement for Application for Certificate of Lawfulness
for Commencement of Development under Planning Permission (Ref:
2343/APP/2020/930) on behalf of Coal Pension Properties Limited
(C/O LaSalle Investment Management)

EAGLE HOUSE, THE RUNWAY, RUISLIP, HA4 6SE

July 2022

Our Ref: WH/22-00267

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1 INTRODUCTION

- 1.1 This statement is prepared in support of an application for a Certificate of Lawfulness of an Existing Use or Development ('CLEUD') seeking confirmation from the Local Planning Authority that, under Section 191 of the Town and Country Planning Act 1990 (as amended) ('the Act', that planning permission 2342/APP/2020/930 ('the S73 Permission') (Appendix 1) was lawfully commenced before the expiry date of 28 March 2022.
- 1.2 The CLEUD application has been submitted on behalf of Coal Pension Properties Limited (C/O LaSalle Investment Management), the landowner ('the Applicant') of the application site at Eagle House, The Runway, Ruislip, HA4 6SE ('the Site').
- 1.3 The original planning permission (reference 2342/APP/2018/2294) ('the Original Permission') (Appendix 2) was granted, and an associated S106 Agreement was entered into, on 29 March 2019. All of the pre-commencement conditions attached to the Original Permission were subsequently discharged on 12 September 2019, under application reference 2342/APP/2019/1633. Following this, a deed of variation to the S106 Agreement was entered into on 11 January 2021 and the S73 Permission, which varied the Original Permission, was granted on 20 January 2021. The S73 Permission does not contain any pre-commencement conditions as these were discharged under the Original Permission. A further deed of variation to the S106 Agreement was completed on 21 February 2022 (ref: 2342/APP/2021/4211).
- 1.4 The Applicant confirmed its intention to the Local Planning Authority to commence the development permitted by the S73 Permission, and thereby implement the S73 Permission, by carrying out works in relation to the construction of the pedestrian access from the Runway through Eagle House to Odyssey Business Park before the expiration of the S73 Permission on 28 March 2022. This approach has been agreed by the Local Planning Authority.
- 1.5 Accordingly, this statement will demonstrate that the planning permission was lawfully commenced before the expiry date of 28 March 2022.

2 **LAWFUL COMMENCEMENT OF DEVELOPMENT**

THE PROCESS OF IMPLEMENTATION OF S73 PERMISSION

- 2.1 To secure a lawful commencement of the development permitted under the S73 Permission on the Site and for the CLEUD application to be granted, it must be established that:
- 2.1.1 all of the necessary pre-commencement conditions relevant to the S73 Permission have been discharged prior to the relevant material operation having been carried out;
- 2.1.2 a material operation under Sections 56(2) and 56(4) of the Act was carried out at the Site before the relevant deadline for implementation (ie by 28 March 2022 in this case); and
- 2.1.3 the works carried out form part of the development permitted under the S73 Permission.
- 2.2 Under the Planning Practice Guidance, paragraph reference 17c-006-20140306, the Applicant is responsible for providing sufficient information to support an application for a certificate of lawfulness, although a Local Planning Authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land.
- 2.3 Furthermore, under that same paragraph, 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.

THE IMPLEMENTATION PROCESS FOLLOWED BY THE APPLICANT

- 2.4 The following process has been followed with evidence to support it:

Discharge of Pre-Commencement Conditions

- 2.5 There are eight pre-commencement conditions (5, 6, 8, 9, 13, 14, 17 and 11) attached to the Original Permission (**Appendix 2**). With the partial exception of Condition 11, these conditions were discharged under the subsequent discharge of condition application (ref: 2342/APP/2019/1633) on 12 September 2019 as confirmed by the decision notice (**Appendix 3**). The decision notice states that Condition 11 is partially discharged, as the Condition contains both the pre-commencement and the pre-occupation elements. The application sought to discharge the pre-commencement condition element of Condition 11, which was approved under the application 2342/APP/2019/1633.
- 2.6 As all of the pre-commencement conditions were discharged under the Original Permission before the S73 Permission was granted, no pre-commencement conditions were attached to the S73 Permission (**Appendix 1**).
- 2.7 Therefore, it is submitted that all necessary conditions relevant to the S73 Permission which required compliance prior to commencement of the relevant material operation have been discharged.

Commencement of the Development

- 2.8 Section 56(2) of the Act provides 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."*
- 2.9 Section 56(4) of the Act provides that:
- "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."*

- 2.10 Section 336(1) of the Act defines a "Building" as including "any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building".
- 2.11 Condition 1 of the S73 Permission states:
"The development hereby permitted shall be begun before the expiration of three years from the date of the original planning permission, 28th March 2022."
- 2.12 A contractor to carry out the pedestrian access works was appointed by the Applicant's project manager, Mr Stephen Kirby of Bourne Wood Partnership Limited. Mr Kirby has provided a Statutory Declaration, dated 21 June 2022, (**Appendix 4**) which evidences the works carried out.
- 2.13 Mr Kirby confirms that, as a project manager, he has been overseeing the project and managing the contractor. He confirms that the contractor started works, initially by setting up the construction site, on 16 March 2022. Site clearance, including removal of vegetation, and initial digging and excavation work commenced on 17 March 2022. From 18 March 2022, the digging of trenching commenced and was completed on 22 March 2022, with foundations of concrete laid and left to harden. From 23 March 2022, brick layering works to construct the pedestrian access commenced. Dated photographs of these works (including a photograph of the progress of brick layering on 28 March 2022) are included within the Statutory Declaration. These works are a material operation under Sections 56(4)(a) and 56(4)(d) of the Act.
- 2.14 Further, Mr Kirby's Statutory Declaration includes evidence that, as part of the contract of the works, all materials necessary to complete the pedestrian access works, including a disabled platform lift) have been ordered with payment made.
- 2.15 It is therefore considered that the Applicant has demonstrated that the trench excavated and foundations laid will facilitate the installation of the pedestrian access, and that the laying of the bricks for the pedestrian access has begun, and those operations, which were carried out before and on 28 March 2022, constitute a material, and lawful, commencement of the development permitted under the S73 Permission.

Works Forming Part of the Development Permitted under the S73 Permission

- 2.16 The approved pedestrian access is shown on the drawing (ground floor plan reference J9216-10C) approved by the S73 Permission. The details of the pedestrian access are shown on the drawings (references DLA-1929-L01-P08, DLA-1929-L-09-P02 and DLA-1929-L-10-PL02) pursuant to Condition 6 of the S73 Permission. These drawings are attached at **Appendix 5**.
- 2.17 Therefore, it is submitted that the works form part of the permitted development under the S73 Permission.

OTHER USEFUL INFORMATION

Communications with the Local Planning Authority

- 2.18 The Applicant engaged with the Local Planning Authority to inform them of its intention to implement the S73 Planning Permission. An approach to implement the S73 Permission was agreed by the Local Planning Authority and the Applicant, as confirmed in an email correspondence dated 2 November 2021 (**Appendix 6**).
- 2.19 The agreed approach was then followed. A covering letter, which accompanied the submission of a Community Infrastructure Levy ('CIL') Assumption of Liability Form and a CIL Commencement Notice, confirmed the Applicant's intention to commencement the development permitted by the S73 Permission, and thereby implement the S73 Permission, by carrying out works in relation to the construction of the pedestrian access from The Runway through Eagle House to Odyssey Business Park. The CIL process is detailed later in this section and the covering letter, together with the relevant CIL forms, is at **Appendix 10**. It also confirmed that the pedestrian access works will comprise:
- digging of a trench for the foundations for the new steps and the disabled platform lift;
 - construction of the foundations for the new steps and the disabled platform lift;
 - construction of new steps;
 - installation of a disabled platform lift;
 - adaptation of the fencing; and
 - reinstatement of landscaping.
- 2.20 The letter also indicated that the digging of a trench of the foundations for the new steps and the disabled platform lift will have been well underway by the expiry of the S73 Permission on 28 March 2022.
- 2.21 In an email dated 14 March 2022 (**Appendix 7**), the Local Planning Authority's Planning Obligations Officer acknowledged receipt of the letter and the Applicant's intention to commence the S.73 Permission. Further, the Officer confirmed that the level of CIL for the development will be paid as per the Original Permission, as the S73 Permission did not create any additional floorspace.

A Deed of Variation of the S.106 Agreement

- 2.22 The Original Permission was granted with an associated S106 Agreement dated 29 March 2019. Further to this, a deed of variation to the S106 Agreement was entered into on 11 January 2021 pursuant to the S73 Permission, itself granted on 20 January 2021.
- 2.23 The Applicant entered into discussions with the Local Planning Authority regarding the implementation of the S73 Permission in August 2021 through the works to construct the pedestrian access from The Runway through Eagle House to Odyssey Business Park as approved under the S73 Permission.
- 2.24 Following the approach agreed by the Applicant and the Local Planning Authority, a further deed of variation to the S106 Agreement was completed on 21 February 2022 (ref: 2342/APP/2021/4211) ('the 2022 DOV') (**Appendix 8**).
- 2.25 The effect of the 2022 DOV pertinent to the implementation of the S73 Permission is that the definition of 'Commencement of Development' for the purpose of the S.106 Agreement is amended to exclude the provision, laying out or construction of the pedestrian access and any works or operations in the course of providing, laying out or construction of the pedestrian access. 'Access Plan' (ref: 1892-WD07), a site plan identifying the pedestrian access which is included in the 2022 DOV is attached at **Appendix 9**. This allowed the Applicant to lawfully commence development through carrying out material operations associated with the

construction of the pedestrian access without triggering any obligations under the S.106 Agreement.

CIL Process

- 2.26 The S73 Permission is subject to the CIL.
- 2.27 On 9 March 2022, the Applicant submitted to the Local Planning Authority a CIL Assumption Liability Form, confirming its assumption of liability, and a CIL Commencement Notice, confirming the intended commencement date of 16 March 2022, with a covering letter, dated 9 March 2022 by e-mail. The e-mail, the covering letter and the CIL Commencement Notice are appended at **Appendix 10**.

3 SUMMARY AND CONCLUSION

- 3.1 In summary, this CLEUD application seeks confirmation of the Local Planning Authority that the S73 Permission was lawfully commenced before the expiry date of 28 March 2022.
- 3.2 This Statement with appendices demonstrates that the Applicant followed the necessary processes, namely discharging all pre-commencement conditions and serving the CIL commencement and assumption of liability notices, prior to commencing development. It also demonstrates that the S73 Permission was lawfully commenced by carrying out a material operation, namely the digging of a trench, laying out the foundations and the laying the bricks for the pedestrian access work, before 28 March 2022.
- 3.3 It is therefore considered that, based on the evidence presented in this Statement and appendices, the Applicant has demonstrated that the S73 Permission was lawfully commenced, and thereby implemented within the required time. On this basis, the rest of the S73 Permission can be built out at any point in the future.
- 3.4 On the basis of the evidence presented, it is respectfully requested that a Certificate of Lawfulness, confirming the lawful commencement of the S73 Permission, be issued.