



SJ Foster Planning

Planning Service
High Peak Borough Council
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20 October 2023

Dear Planning Service

Application for Certificate of Lawfulness of Existing Use or Development – Land off Dollywood Close, Buxworth

Please find enclosed an application for a Certificate of Lawfulness of Existing Use or Development under S191 of the Town & Country Planning Act 1990 for the above site. The Certificate application seeks to establish that a lawful, material start has been made on the site and that permissions HPK/2016/0108 and HPK/2021/0044 are therefore saved in perpetuity.

Background

Outline application HPK/2016/0108 was submitted on 4 March 2016 and proposed the development of 5 No. detached dwelling houses of up to 2 storeys in height. The outline application was approved on 24 November 2017 (appendix 1) and was, at that time, subject to a S106 agreement which required the provision of affordable housing. The S106 was later removed by Planning Committee on 11 March 2019 (see appendix 2).

In the intervening period, the country went into lockdown and the government introduced the Business and Planning Act 2020 which automatically extended the life of outline permission HPK/2016/0108 to 31 May 2021 (appendix 3).

Discharge of Condition application DOC/2021/0008 was made to discharge conditions attached to the outline permission on 27 January 2021. In parallel, an application for Reserved Matters approval was made on 2 February 2021, under HPK/2021/0044, and was granted on 30 July 2021 (appendix 4). Under condition 1 of outline permission HPK/2016/0108 the permission therefore had to be implemented by 30 July 2023.

DOC/2021/0008 was determined on 3 September 2021 and discharged pre-commencement conditions 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18 attached to HPK/2016/0108 (appendix 5). Condition 19 could not be discharged at that time. A further application to discharge condition 19 was made on 25 January 2022 (DOC/2022/0044) and the condition was successfully discharged on 14 November 2022 (appendix 6). This represented the discharge of all pre-commencement conditions attached to the original outline permission, HPK/2016/0108.

A Non Material Amendment application (NMA/2021/0028) to make minor alterations to house design, landscaping and tree protection was submitted on 27 September 2021 alongside a discharge

of condition application to discharge pre-commencement conditions 3 and 4 attached to the Reserved Matters permission (DOC/2021/0100). The NMA was finally approved on 26 April 2023 (appendix 7) and condition 3 was discharged on 24 May 2023, but the LPA determined that insufficient information had been submitted to discharge condition 4 (appendix 8). Although the applicant disagreed with that determination on the basis that the additional information being requested went far beyond the intent of the original condition, the impending implementation deadline meant that additional drainage information was assembled and submitted under a new discharge of condition application (DOC/2023/0047) on 14 June 2023, 6 weeks before the implementation deadline of 30 July 2023.

Once DOC/2023/0047 had been submitted, it became apparent it would not be determined within a reasonable timeframe. A material start on site was thus made on 6 July 2023 and the development was registered with Building Control in anticipation of condition 4 being discharged (appendix 9). The works on site meet the requirements of S.56(4)(b) of the 1990 Act, comprising the digging of a trench which is to contain the foundations, or part of the foundations of a building.

Condition 4 was eventually discharged on 4 October 2023 (appendix 10) some 4 months after validation. The delay in discharging the final pre-commencement condition was outside of the applicant's control. The timeline set out above demonstrates that the applicant made all reasonable endeavours to ensure that all pre-commencement conditions were discharged prior to 30 July 2023 and only took steps to trigger commencement when it became clear that the final condition would not be discharged in time.

The fact that the Council formally discharged the condition after 30 July 2023 demonstrates that they believed the permission remained live. If they had taken a contrary position, then the condition would be incapable of being discharged as the permission would have fallen away.

The works commenced on site on 6 July 2023 were in complete accordance with the permission and did not in any way impact upon the ability of condition 4 to be discharged. There is nothing that has taken place on the site that the LPA could or would have enforced against - the development will proceed as intended and planned by all concerned. It would therefore be irrational for the LPA to undertake enforcement proceedings against the material start made on the site and the start must therefore be considered to be lawful (*Hammerton v London Underground Ltd* 2003 JPL 984 and *R on the application of Prokopp v London Underground Ltd* 2004 Env LR).

The submitted evidence should prove sufficient for the purposes of S191. However, if you have any queries or require any clarification do not hesitate to contact me.

Your sincerely

Sarah Foster MRTPI

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Appendices:

- 1 – Decision Notice HPK/2016/0108
- 2 – Committee Resolution 11/03/2019
- 3 - Business & Planning Act 2020 email
- 4 – Decision Notice HPK/2021/0044
- 5 – Decision notice DOC/2021/0008
- 6 – Decision Notice DOC/2022/0100
- 7 – Decision Notice NMA/2021/0028
- 8 – Decision Notice DOC/2021/0100
- 9 – Building Control Report 10/07/2023
- 10 – Decision Notice DOC/2023/0047

