DATED 5TH JULY 2019

ENHANCED DEVELOPMENTS LIMITED

SUPPORTING STATEMENT IN RESPECT OF AN APPLICATION FOR A CERTIFICATE OF PROPOSED LAWFUL DEVELOPMENT

Relating to Anzio Camp, Buxton Road, Blackshaw Moor, Leek, Staffordshire

Town and Country Planning Act 1990
(as amended)

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CLAUSE

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1. INTRODUCTION

1.1 This statement is submitted in support of an application for the issue of a certificate of proposed lawful use and development in connection with works undertaken on land at the former Anzio Camp, Buxton Road, Blackshaw Moor, Leek, Staffordshire ("the **Site**") pursuant to a planning application (reference number SMD/2014/0683) made by Enhanced Developments Ltd ("the **Company**") where planning permission ("the **Permission**") was granted by Staffordshire Moorlands District Council ("the **Council**").

1.2 The **Permission** granted on 9 November 2015 was for the "*Erection of extra care housing, live work units, ancillary social centre and facilities building change of use to holiday park*"

1.3 The permission was subject to the standard time condition, as condition 1:

"The development hereby permitted shall be begun before the expiration of three years from the date of this permission."

1.4 Development therefore needed to have commenced by some point on 9 November 2018 at the latest.

1.5 A time period which runs '*from*' a date starts on the first day after that date (*Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336). A letter sent by the **Council** to the appointed agent on 1 March 2019, wrongly stated that the final date for implementation was 8 November 2018.

1.6 A number of condition discharge applications were made to the **Council** between August 2018 and November 2018 with the last application made on 9 November 2018.

1.7 An appeal has been made to the Secretary of State in connection with the failure of the **Council** to discharge the various condition discharge applications.

1.8 Works were undertaken on site before the **Permission** expired.

1.9 Pursuant to Section 192 of the Town and Country Planning Act 1990, the **Council** is invited to issue a certificate which recognises that a lawful commencement of development was made on the **Site** by virtue of demolition works which took place and which were not linked to any pre-commencement conditions. This is the primary point which this application seeks to put to the **Council**.

1.10 Furthermore, as a secondary point, the **Council** is invited to confirm that if the condition discharge applications are successful on appeal, then the works undertaken to dig the foundations of one unit approved under the **Permission** were in themselves sufficient to constitute a proper start of development.

2. LAW AND POLICY

2.1 The Town and Country Planning Act 1990

(a) Section 192(1) provides that if any person wishes to ascertain whether any operations proposed to be carried out in, on or under land would be lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

2.2 For the purpose of meeting the condition in a planning permission which requires development to be begun within a certain period, the Town and Country Planning Act 1990, s 56(2) provides:

"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."

By s 56(4):

"In subsection (2) "material operation" means:

(a) *any work of construction in the course of the erection of a building;*

(b) *any work of demolition of a building;*

(c) *the digging of a trench which is to contain the foundations, or part of the foundations, of a building;*

(d) *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);*

(e) *any operation in the course of laying out or constructing a road or part of a road;*

(f) *any change in the use of any land which constitutes material development'.*

2.3 Development may be begun by works which are not material operations in the list: *Field v First Secretary of State*.

2.4 As a general principle, the implementation of a planning permission must be in accordance with its conditions. In *Whitley & Sons Co Ltd v Secretary of State for Wales* Woolf LJ said:

"As I understand the effect of the authorities to which I am about to refer, it is only necessary to ask the single question: are the operations (in other situations the question would refer to the development) permitted by the planning permission read together with its conditions? The permission is controlled by and subject to the conditions. If the operations contravene the conditions they cannot be properly described as commencing the development authorised by the permission. If they do not comply with the permission they constitute a breach of planning control and for planning purposes will be unauthorised and thus unlawful."

2.5 Where there has been non-compliance with a condition, which requires something to be done before development commences, then there has always been room for exceptions.

2.6 These exceptions come potentially under two categories: conditions which are not so significant that a breach of them will not prevent the commencement of the development; and situations where it would be irrational, and so unlawful, to enforce against the particular breach in all the circumstances.

The submission and approval of details under conditions

2.7 Applications for the approval of details under conditions are to be made in writing, containing whatever information is necessary:

"*an application for any consent, agreement or approval required by a condition or limitation attached to a grant of planning permission must:*

(a) *be made in writing to the local planning authority and must give sufficient information to enable the authority to identify the planning permission in respect of which it is made; and*

(b) *include such particulars, and be accompanied by such plans and drawings, as are necessary to deal with the application*."

2.8 An applicant has a right of appeal against the refusal of an application for the approval of details under a condition; see Town and Country Planning Act 1990, s 78(1)(b):

"refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions;"

2.9 The Secretary of State may also consider an appeal against the failure of the authority to determine an approval of details application within the statutory determination period

2.10 National Planning Practice Guidance ("the NPPG")

The NPPG provides advice regarding how applications should be determined alongside the National Planning Policy Framework (NPPF).

2.11 What information must accompany an application for a lawful development certificate?

(a) 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.

(b) 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.

(c) 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.

2.12 Who is responsible for providing sufficient information to support an application?

(a) The applicant is responsible for providing sufficient information to support an application, 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.

(b) A local planning authority is entitled to canvass evidence if it so wishes before determining an application.

(c) If a local planning authority obtains evidence, **this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.** 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.

2.13 How is an application for a lawful development certificate determined?

(a) 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.

(b) A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful; it may mean that to date insufficient evidence has been presented.

(c) The Courts have held (see *F W Gabbitas v SSE and Newham LBC (1985) JPL 630*) that the applicant's own evidence does not need to be corroborated by '*independent*' evidence in order to be accepted. If the LPA have no evidence of their own, or from others, then provided the applicant's evidence alone is sufficiently precise and unambiguous this in itself may justify the grant of a certificate *"on the balance of probability"*. This test is less than the criminal test of "*beyond all reasonable doubt*" and simply means that the LPA should be satisfied that it is "*more likely than not*" that what the applicant says has happened by reference to identified evidence, has happened.

(d) The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

3. THE FACTS

3.1 This supporting statement should be read together with the statutory declaration ("the **Declaration**") which has been sworn by Mr N. Smart who is a director with the **Company**.

3.2 The Declaration confirms that as a matter of fact:

(a) two sets of works were carried out on the **Site**;

(b) the first related to the demolition of a building identified as EB13 on the **Permission** drawings;

(c) It is shown as being demolished on the application drawings (see drawing 3262/SM/14/1001 rev P1 Proposed Site Masterplan Existing MOD Buildings Overlaid which matches, in this respect, the approved Site Master Plan 3262/SM/14/1000 P4) and that its site would have an estate road running through it;

(d) the demolition took place on 17 October 2018;

(e) a Building Act 1984 section 80 notice of intention to carry out demolition was served on the Council's building control team on 15 October 2018, who immediately acknowledged receipt;

(f) a Building Act section 81 notice with covering letter was sent out by the Council in respect of the works of demolition and received on 22 October 2018;

(g) the building had been demolished as part of carrying out the **Permission**;

(h) the second works were the digging of a trench for the foundations of a building on 5 November 2018;

(i) a Building Act application in respect of these works had been submitted on 26 October 2018;

(j) a trench one metre deep and 650 mm wide was dug with a mini digger around the footprint of the whole building; and

(k) photographs have been produced of those works.

4. MAIN ISSUES

4.1 It is considered that based upon the facts of the case the following main issue needs to be examined in the light of the facts of the situation as well as relevant planning law:

"*whether the works of implementation were carried out before the* ***Permission*** *expired*."

5. ASSESSMENT

5.1 The issue as to whether the **Permission** has expired depends upon whether development has commenced under the planning permission in accordance with the conditions on the planning permission or with the benefit of any of the exceptions to that general principle.

5.2 Two types of works were carried out before the implementation deadline: demolition and the digging of trenches for foundations.

5.3 The demolition works were comprised in the **Permission** and its conditions repeatedly acknowledged that it included demolition: see conditions 3, 4, 5, 14.

5.4 There were no conditions requiring any details to be submitted or approved by the **Council** prior to the carrying out of demolition.

5.5 Of the conditions which required the approval of details:

(a) in conditions 3, 4 and 5, it was expressly said that works of site clearance and demolition could take place without the approval of those details;

(b) by condition 3 site clearance and demolition was allowed to take place before the Phasing Programme had been submitted and approved. Those works were not included in the phases.

(c) Consequently conditions which required details to be approved before a '*phase of the development (as agreed under Condition 3)*' was commenced, did not require details to be submitted before demolition took place. This applies to conditions 3, 4, 5, 8, 16, 25, 30.

5.6 Condition 25 prohibits development '*of any phase approved under Condition 3*' and so would not apply to demolition which is a pre-phase work.

5.7 Conditions 26 and 27 require the approval and carrying out of a remediation scheme, if the need for it is indicated by the condition 25 risk assessment, before development takes place. However, this can only refer to development under the phases, since the risk assessment is not required at any earlier stage.

5.8 It is clear that no details had to be submitted prior to the commencement of demolition works.

5.9 Condition 14 says:

"Before the commencement of any phase of the approved development (as agreed under condition 3) including any demolition, site clearance, stripping or site establishment, temporary protective fencing and advisory notices for the protection of

the existing trees to be retained shall be erected in accordance with guidance in British Standard 5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations, and shall be retained in position for the duration of the period that development takes place, unless otherwise agreed by the Local Planning Authority. Within the fenced areas there shall be no excavation, changes in ground levels, installation of underground services, provision of hard surfacing, passage of vehicles, storage of materials, equipment or site huts, tipping of chemicals, waste or cement, or lighting of fires unless otherwise agreed by the Local Planning Authority. Such tree protection measures may be implemented on a phased basis in accordance with any approved or agreed phasing of the construction of the development hereby approved, providing always that such measures are in place prior to commencement of development in any particular area of the overall site and are retained in place for the full duration of the period that development takes place in the area concerned."

5.10 The condition is concerned with tree protection measures where they are necessary.

5.11 Even if protective measures had not been carried out in advance of demolition, then that would be a breach of condition rather than an error which imperils the implementation of the **Permission**.

5.12 Condition 15 requires '*advanced tree and woodland planting'* to be carried out in the first available dormant season following the grant of planning permission.

5.13 However it does not require the planting to take place before any development takes place. So if it has not been done (and the **Council** say that it has not), that does not alter the ability to implement the **Permission**.

5.14 The demolition works in October 2018 were therefore the beginning of development under the **Permission**. Condition 1 was satisfied and the **Permission** has therefore not lapsed.

5.15 The second basis for having begun development is the trenching works.

5.16 These were works which are due to fall within the phases.

5.17 They would therefore commence development under the **Permission** if:

(a) valid applications for all details required for the phases were made on or before 9th November 2018; and

(b) those applications are subsequently approved: see *Whitley*.

5.18 Applications were submitted within the period.

5.19 A subsequent approval of all of the conditions on appeal would enable the foundation works to implement the **Permission.**

6. CONCLUSION

6.1 The evidence in support of the application clearly demonstrates on the balance of probabilities that the **Permission** has been implemented.

6.2 A certificate of lawfulness of proposed use or development (CLOPUD) should be granted to certify that development can continue under the **Permission**.

6.3 This is on the basis that development had commenced by the end of 9th November 2018.

6.4 A certificate of proposed development is appropriate in this case as it establishes the status of the **Permission**.

6.5 The application before the **Council** is primarily based on the demolition works only which clearly occurred as a matter of fact, before the **Permission** expired.

6.6 As a secondary point, the foundation works would be sufficient in their own right to constitute a proper start of development if the appeals before the Secretary of State are successful.

6.7 The applicant reserves the right to provide further evidence or to make further submissions should the **Council** provide documentation or receive any third party representations. The applicant would request that the same are made available in order that a response can be provided to assist the proper determination of the case.

6.8 As far as the applicant is concerned the evidence, on the balance of probabilities (i.e. that it is more likely than not), clearly demonstrates that a Certificate should be issued in the terms as requested

Knights plc

July 2019