
**LEGAL OPINION IN SUPPORT OF AN
APPLICATION FOR A LAWFUL
DEVELOPMENT CERTIFICATE**

1 INTRODUCTION

- 1.1 This legal opinion is prepared in support of an application for a Certificate of Lawfulness of Proposed Use or Development (“**CLOPUD**”) pursuant to Section 192(1)(b) of the Town and Country Planning Act 1990 (as amended) (the “**Act**”). It relates to the former Boddingtons Brewery Site, Dutton Street, Manchester, M3 1LE (“**Property**”). This application for the CLOPUD is made to Manchester City Council (the “**Council**”) as the local planning authority for the Property.
- 1.2 The application seeks a CLOPUD to establish the lawful implementation of planning permission 118831/FO/2018 and varied by way of a non-material amendment consent 132287/NMC/2021 (the “**Planning Permission**”), by confirming that the works authorised by the Planning Permission would be lawful to continue to be undertaken. The Planning Permission granted by the Council approved the following:
- 1.2.1 **Planning permission 118831/FO/2018:** erection of two buildings (a part 17, part 12 storey building and a part 26, part 23 storey building) to form 556 residential units (Use Class C3a) together with the creation of 3490 sqm of commercial floor space (Use Classes A1, A2, A3, B1 and D1) with associated landscaping, access and other associated works - granted on 28 February 2019;
- 1.2.1 **Non-material amendment 132287/NMC/2021:** non material amendment to planning permission 118831/FO/2018 to amend wording of conditions 3, 4, 5, 6, 7, 8, 11 and 13 to ensure information is submitted within specified timescales and phasing of the development - granted on 25 November 2021 (“**NMA**”).
- 1.3 The Property is proposed to be developed pursuant to the Planning Permission in two distinct phases, these being:
- 1.3.1 **Phase 1** - will comprise the delivery of the new areas public realm space in the south-west area of the Property; and
- 1.3.2 **Phase 2** - will comprise the delivery of the residential and commercial elements of the proposals together with the remaining of public realm space in accordance with the Planning Permission.
- 1.4 The Planning Permission was granted subject to a condition requiring the approved development to be begun not later than three years from the date of the Planning Permission. This expiry date is 28 February 2022.
- 1.5 The Planning Permission also contains various pre-commencement conditions as varied by the NMA. All pre-commencement planning conditions required for Phase 1 were approved by the Council on 22 February 2022 and further details are set out in the supporting application documents.
- 1.6 The evidence supplied in the Statutory Declaration of Chris Baker demonstrates the Planning Permission has been lawfully implemented. Accordingly it is our view that the works undertaken at the Property constitute ‘development’ as defined by s.56 of the Act.
- 1.7 As such the legal test, as set out below, has been met and the certificate applied for should be issued by the Council.

2 LEGISLATIVE CONTEXT

- 2.1 Section 192(1) of the Act states:
- “If any person wishes to ascertain whether-*

...any proposed use of buildings or other land; or

any operations proposed to be carried out in, on, over 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 The National Planning Practice Guidance ("**NPPG**") states:

*"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**" (Paragraph: 006 Reference ID: 17c-006-20140306).*

Our emphasis added in bold.

2.3 Development is commenced when a 'material operation', as defined in the Act has been carried out. Section 56(4) of the Act gives the following (non-exhaustive) examples of material operations:

"(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 a trench;

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

(e) any change in the use of any land which constitutes material development."

2.4 Any works are capable of constituting a material operation to implement a planning permission, provided that they:

2.4.1 relate to the planning permission i.e. they are 'comprised in the development' within the meaning of s56(2) of the Act;

2.4.2 are authorised by the planning permission; and

2.4.3 involve building operations which are more than de minimis.

2.5 The threshold (in terms of the nature and scale of works required) for lawfully implementing a planning permission is relatively low; the works do not have to be particularly costly nor extensive. The Courts have generally taken a lenient approach towards what operations suffice in order to treat a planning permission as having been implemented. For example, case law has held the following types of works could be considered to constitute lawful implementation planning permissions:

2.5.1 digging of a trench, even where the trench was subsequently backfilled (*High Peak Borough Council v Secretary of State for the Environment and Courtdale Developments [1981] JPL 366*);

2.5.2 pegging out of the centre line of a road on a site with permission for residential development (*Malvern Hills District Council v Secretary of State for the Environment* [1982] 1 EGLR 175).

2.6 It is for an applicant to decide whether to apply for a CLOPUD, implementation works to commence development in accordance with the above criteria will be lawful without the certificate, but this is the only mechanism available to an applicant to have the works certified as lawful.

3 **LAWFUL IMPLEMENTATION**

3.1 Following the discharge of conditions, the Planning Permission was implemented on 21 February 2022. The works comprise those set out below and shown in the below photographs:

3.1.1 Buried utilities survey and other site services scanning

3.1.2 Trial pit excavations

3.1.3 Hoarding erection

3.1.4 Fencing removal

3.1.5 Services removal

3.1.6 Tarmac removal

3.1.7 Reduced level excavations

3.1.8 Importation of stone and hardcore

3.1.9 Formation level stone build up

3.1.10 Unexploded ordinance witnessing and probing in support of the above works.





- 3.2 Included with this application is a statutory declaration sworn by Chris Baker. This includes evidence of the works described at 3.1 sworn on oath. The works can also be viewed by the case officer on any site visit.
- 3.3 It is our view that above works comprise lawful implementation as they:
- 3.3.1 relate to the Planning Permission in that they are 'comprised in the development' within the meaning of s56(2) of the Act;
 - 3.3.2 fall within a category specifically described within section 56(4) of the Act; and
 - 3.3.3 involve building operations which are more than de minimis.
- 3.4 The works are therefore sufficient to implement the development within the meaning of section 56 of the Act.

4 CONCLUSION

- 4.1 The evidence submitted in support of this application demonstrates the legal test of implementation has been met and the works:
- 4.1.1 were carried out before 28 February 2022;
 - 4.1.2 comprised the works listed above at paragraph 3.1.
- 4.2 The Planning Permission is therefore extant such that the development authorised may lawfully be carried on and completed at any time in the future.
- 4.3 We therefore invite the Council to issue the lawful development certificate pursuant to this application.

Irwin Mitchell LLP

March 2022