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Planning, Building Control & Licensing
Manchester City Council
PO Box 532
Town Hall
Manchester
M60 2LA

17 September 2024

Dear Sir / Madam,

RE: Lawful Development Certificate – 168-170 Bury Old Road, Manchester, M7 4QY

Introduction

On behalf of our client, Mayfair & Co Developments Ltd, please find enclosed an application submitted under section 192 of the Town and Country Planning Act 1990 ('the Act') for a Certificate of Lawful Development.

The application seeks confirmation that the planning permission can be built out and completed as approved, following its lawful implementation via a material start made within 3 years of the date of permission 127106/FO/2020 (i.e. prior to the 8th of January 2024) in compliance with all relevant pre-commencement conditions.

This Certificate of Lawful Development has been submitted electronically via the Planning Portal (PP-13415050) and is supported by the following documents as evidence:

- Site Inspection report (Align Building Control Ltd. ref. BC-2024-001)
- Decision Notice – Discharge of Conditions 3, 4, 6, 8, 11 and 21 Decision Notice (Manchester City Council ref. CDN/23/0379)
- Decision Notice (Manchester City Council ref. 127106/FO/2020)

The requisite fee (including the Planning Portal service charge) has been paid online at the point of submission.

This submission follows recent engagement with the Council where the principal of seeking confirmation by way of a Lawful Development Certificate was discussed with Steve McCoombe (Senior Planner). The applicant is grateful for the opportunity to discuss the specifics of the case with the Council ahead of a formal submission.

Whilst it is understood that the applicant was initially advised to submit an application under s191, the decision has been made to submit an application under s192, following advice from a legal representative. The rationale for taking this approach is set out in the following section.

Site Location, Context and Planning History

The site is located in a mid-row position between Bury Old Road to the south and Catherine Road to the north. The site adjoins a two storey, doubled fronted dwellinghouse to the east and a large, detached bungalow to the west. The site overlooks Cheetham Hill Cricket Club to the north and residential buildings on the other side of Bury Old Road to the south, including three storey apartment blocks.

The site measures 0.27 hectares in area and was previously occupied by a pair of large, semi-detached buildings (Heaton Villas), which since been demolished.

Legislative Background

Town and Country Planning Act 1990

Section 55(1) of the Town and Country Planning Act 1990 (TCPA) defines the term 'development' as 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.

Section 191 of the Act makes provision for an application to be made to a Local Planning Authority (LPA) by anyone who wishes to ascertain whether any operations which have been carried out in on, over or under land are lawful. For the purposes of the Act, operations are lawful at any time if no enforcement action has been taken in respect of them. Section 192 of the Act makes similar provision for an application to be made to ascertain whether proposed operations would be lawful.

Whilst s191 would be the traditional route for establishing the lawfulness of works undertaken to date, s192 can also be used to establish whether the proposed works can be completed in accordance with an approved position, as well as confirming the lawfulness of works carried out.

This is in line with the case of *Government of the Republic of France v the Royal Borough of Kensington and Chelsea and others* [2017] EWCA Civ 429, where the Court of Appeal established that an applicant is entitled to use s192 to obtain a certificate relating to the completion of works pursuant to a planning permission, on the basis that those works are lawful because the planning permission has been implemented, without first obtaining a certificate under s191 that the works of implementation were themselves lawful (<https://landmarkchambers.co.uk/wp-content/uploads/2018/05/10-KPG-CA-Judgment.pdf>).

Interpretation of the Legislation

To ensure compliance, the applicant wishes to secure comfort via submission of a Certificate of Lawfulness predicated upon the strength of evidence contained here within.

It is recognised that the burden of proof is on the applicant and the Courts have held that the relevant test of the evidence on such matters is '*the balance of probability*'. Therefore, 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.

The remainder of this Statement sets out merits of the evidence against which the Local Planning Authority are asked to issue a Certificate of Lawfulness on the balance of probability.

The Government of the Republic of France case has confirmed that s192 is the appropriate certificate to establish whether proposed works can be completed in accordance with an approved position. It should be noted that s192 also presumes the lawfulness of the works carried out.

Extant Planning Permission

Permission was granted on the 8th of January 2021 (127106/FO/2020) for the erection of 12 dwellinghouses at the site, together with associated parking, landscaping and boundary treatment, and the decision was subject to a number of conditions. An application to discharge the pre-commencement conditions, namely 3 (materials), 4 (CMP), 6 (ground conditions), 8 (noise), 11 (drainage) and 21 (lighting), was submitted on the 26th of June 2023 and subsequently approved.

Drainage connection and foundation excavation works have also been undertaken in line with the approved details. These include the installation of a new inspection chamber, which connects to the existing combined drain within Catherine Road and a foundation excavation for one of the semi-detached dwellings, measuring approximately 0.75m deep and 0.6m wide. The supporting Site Inspection report confirms that these works had been undertaken on or before the 5th of January 2024.

Section 56(4) of the TCPA defines various material operations that would represent a material start, which include the digging of trenches to contain the foundations or part of the foundations of a building, and the laying of any underground main or pipe. To be material, an operation must also be more than *de minimis* (i.e. more than negligible).

As the works are consistent with the definitions provided within the TCPA and have been undertaken to an extent that is more than *de minimis*, they are considered to represent a material start on site.

Lawfulness of Works to be Completed

Drainage connection and foundation excavation works associated with the residential development at 168-170 Bury Old Road were completed prior to the 5th of January 2024. Based on the fact that a material operation was carried out in accordance with the planning permission and prior to the expiry date of the 8th of January 2024, a material start is considered to have been made and the development is therefore lawful.

Therefore, as the planning permission has been implemented within the set three-year period, the balance of the remaining works can also be deemed to be lawful, in line with the requirements of the Act.

On that basis, I trust that the Council have everything necessary in order to deal with this Certificate of Lawful Development application swiftly. However, should you have any queries please do not hesitate to get in touch.

OFFICES IN

London
Manchester
Warwick



Yours sincerely

A handwritten signature in black ink that reads 'S Newall'.

Simon Newall
Principal Planner

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For and on behalf of
Q+A Planning Ltd

Enc. Mayfair & Co Developments Ltd