

BRICKPAPER LIMITED (IN LIQUIDATION)

STATEMENT IN SUPPORT OF AN APPLICATION FOR A
LAWFUL DEVELOPMENT CERTIFICATE
RELATING TO
BASEMENT CARPARK AT APARTMENT BLOCK AT NORTHERN ANGEL,
DYCHE STREET,
MANCHESTER.

Introduction

1. This statement is made in support of a lawful development certificate application by Brickpaper Limited (in liquidation) in respect of a basement carpark at the apartment block known as Northern Angel on land bordered by Dyche Street, Ludgate Street, Simpson Street and Sharp Street ('the Property'). A plan showing the Property edged red is provided at appendix 1.

Factual Background

2. Planning permission was granted to Aztec Developments by the City Council on 8 August 2004 under reference 068647/MO/2003/NI for the development of the Property for 108 residential units ('the 2004 Permission'). A copy of the 2004 Permission is provided at appendix 2. The 2004 Permission granted approval for 108 residential units to be built over six floors with 109 car parking spaces provided at two basement levels.
3. The 2004 Permission was granted subject to 16 planning conditions. Of those conditions, condition 8 provided that:-

"The car parking provision indicated on the approved plans shall be surfaced, demarcated and made available for use prior to the building hereby approved being occupied. The car park shall then be available at all times whilst the site is occupied.

Reason – To ensure that there is adequate car parking for the development proposed when the building is occupied and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP".

4. A section 106 unilateral undertaking was entered into by Aztec as the owner of the Property in conjunction with the 2004 Permission dated 8 April 2004 ('the 2004

S.106'). The 2004 S.106 contained an obligation for the payment of a financial contribution towards the improvement of public open space at St. Michael's Flags. It did not contain any obligations in relation to car parking.

5. The development was commenced by Aztec pursuant to the 2004 Permission. In 2005, Brickpaper purchased the Property from Aztec and built out and completed the development.
6. In relation to car parking, the basement car park over two levels was completed as part of the development. When individual apartments within the development were disposed of on completion, car parking spaces were not automatically included in those disposals and apartment owners were offered the opportunity to purchase a car parking space separately.
7. A number of apartment owners chose not to purchase a car parking space. Out of the 109 car parking spaces provided, approximately 45 spaces were not sold to apartment owners and those spaces remained in the ownership of Brickpaper Limited.
8. In 2010, Brickpaper Limited entered into an agreement with Online Parking Limited T/A Parking Space Rentals ('PSR') to manage/rent out the 45 car parking spaces on its behalf. PSR have continued to manage the car parking spaces in Brickpaper's ownership from 2010 to date.
9. Of the 45 car parking spaces, the vast majority have been rented out by PSR to non-residents of the Property on a short term basis. Car parking spaces can be rented for a minimum of one month upwards, with the longest customer having rented a space continuously since 2010.
10. A small number of the Brickpaper car parking spaces have been rented out by PSR to apartment owners of the Property.

11. A small number of the 45 car parking spaces have been sold to apartment owners at the Property. Of the 45 spaces originally managed by PSR, PSR currently manage/rent out 39 parking spaces with 6 spaces having been disposed of. Plans showing the car park layout and the car parking spaces currently managed by PSR are provided at appendix 3.
12. There is submitted with this application, a statutory declaration by Simon Barton of PSR. This confirms that he has been employed by PSR for almost 15 years and has been involved in the management of car parking spaces at the Property for more than 10 years.
13. Mr. Barton's statutory declaration appends to it:-
- i) A plan which shows the area of the car park over two levels and identifies the car parking spaces currently managed by PSR;
 - ii) A schedule of monthly spreadsheets covering the period 2012 to 2024 that record the rental of car parking spaces since 2012.
14. The monthly spreadsheets appended to Mr. Barton's statutory declaration highlight those car parking spaces which have been rented by residents of the Property and those which have been rented by non-residents. It can be seen from this evidence that the vast majority of the car parking spaces managed by PSR for Brickpaper since 2012 have been let to non-residents of the Property.
15. The position is therefore, that the car park at the Property has been continually used by non-residents of the Property since 2010.

16. The application therefore seeks a lawful development certificate to certify that there has been a continuous breach of condition 8 for more than 10 years and that the use of the car park by non-residents is therefore lawful.

The Law applicable to Lawful Development Certificates

17. Section 191(1) of the Town and Country Planning Act 1990 (the “1990 Act”) states that:-

“if any person wishes to ascertain whether –

- a) any existing use of buildings or other land is lawful;*
- b) any operations which are being carried out in, on, over or under land are lawful;*
- or*
- c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful.*

he may make an application for the purpose of the local planning authority specifying the land and describing the use, operations or other matters.”

18. Section 191(3) of the 1990 Act states that:

“For the purposes of this Act, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful if –

- a) the time for taking enforcement action in respect of the failure to comply with the condition has expired; and*
- b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then enforced.”*

19. Section 171(3) of the 1990 Act states that:

“In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.”

20. The standard of proof in respect of a lawful development certificate is the balance of probability.

21. Section 191(4) of the 1990 Act states that:

“If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description is modified by the local planning authority, or a description is substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”

22. In relation to cases involving breach of planning conditions, there is legal authority for the approach to be adopted – see *Nicholson -v- Secretary of State for the Environment, Transport and the Regions* [1998] 76P & CR191. The Nicholson case held the following:-

- i) For the purposes of an application under section 191 for a lawful development certificate the relevant time for assessment is the time of the application at which time there has to be a breach taking place;
- ii) A certificate can only be granted if non-compliance exists at the time of the application and if a period of 10 years has expired since the breach first occurred.

Assessment of the Application

23. The evidence submitted with the application demonstrates that the car park at the Property has been used by non-residents continuously since 2010 up to the date of the application and in breach of condition 8.
24. The evidence of Mr. Barton, in particular the monthly spreadsheets covering the period 2012 to the date of the application demonstrate that the use by non-residents has not only been taking place for more than 10 years but has also been continuous throughout that 10 year period to the date of the application. The application therefore meets the requirements of section 191 of the 1990 Act and accords with the approach in the Nicholson case.
25. On the basis of the submitted evidence, the application, therefore, demonstrates beyond the balance of probabilities that the car park has been used by non-residents for more than 10 years in breach of condition 8 of the 2004 Permission. The Council is therefore requested to grant a lawful development certificate in accordance with section 191(4) of the 1990 Act to certify that condition 8 has been breached continuously for a period in excess of 10 years and that the use of the car park at the Property by non-residents is therefore lawful.
26. Planning Practice Guidance encourages local planning authorities to spell out the characteristics of the activity in question so as to define its characteristics unambiguously. In the case of the application we consider that should be fairly straightforward. The certificate should certify that condition 8 has been breached continuously for a period in excess of 10 years and that the use of the car park at the Property by non-residents is therefore lawful. The certificate should also record the number of car parking spaces currently rented out to non occupiers of the Property is

39 spaces. This would enable the Council to monitor whether any future intensification of that use by non residents is material.

APPENDIX 1

Received 200323

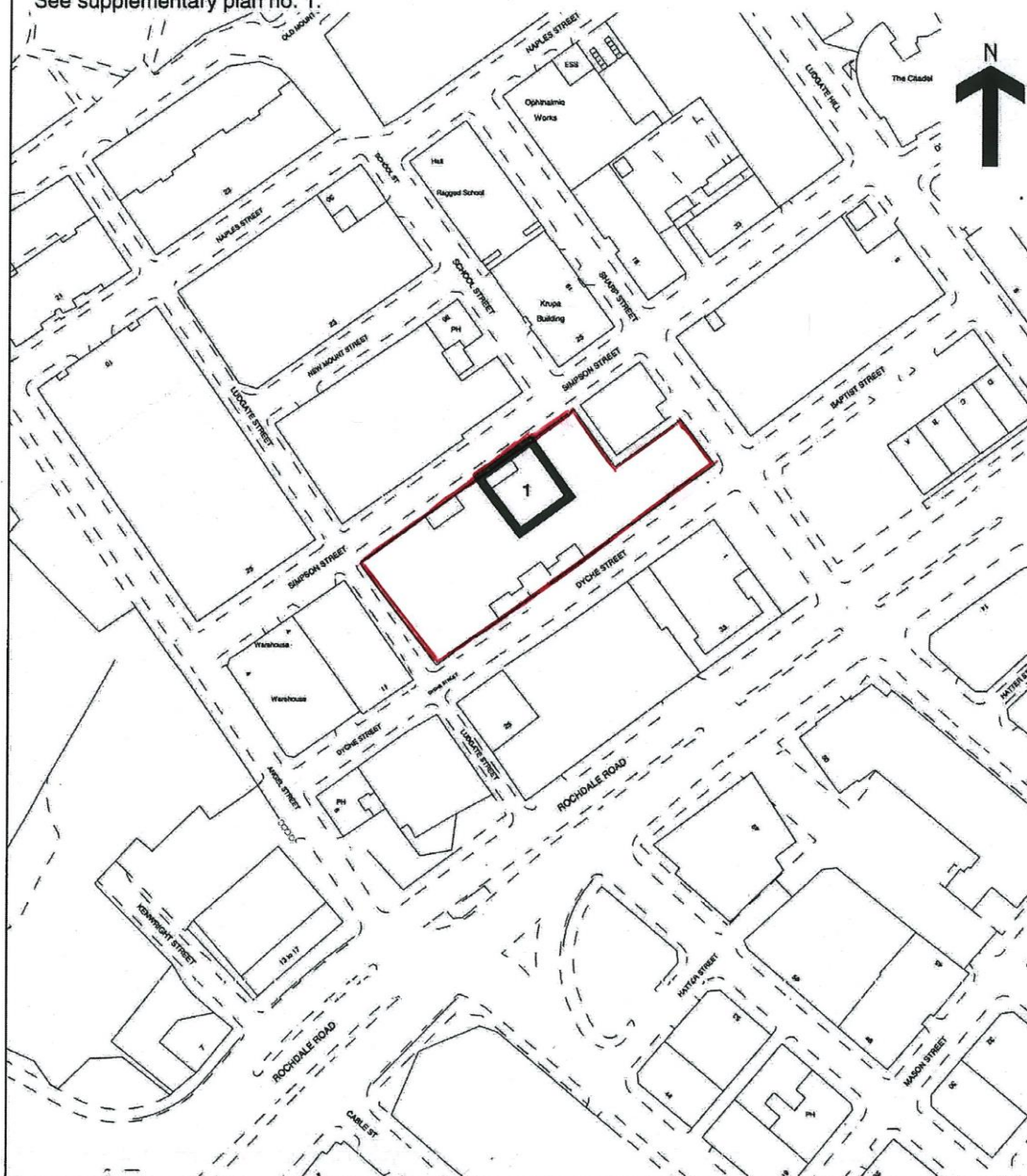
HM Land Registry
Official copy of
title plan

Title number **LA208712**
Ordnance Survey map reference **SJ8499SE**
Scale **1:1250**
Administrative area **Greater Manchester:**
Manchester



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See supplementary plan no. 1.



This official copy issued on 16 March 2023 shows the state of this title plan on 16 March 2023 at 11:43:18.
It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by HM Land Registry, Durham Office.



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APPENDIX 2



Planning

Growth & Neighbourhoods Directorate

Register of Applications

Application Reference Date Registered

068647/MO/2003/N1 17 Oct 2003

Applicant's Name & Address

Aztec Developments
1st Floor Courtlets House 38 King Street West Manchester M3 2WF

Agent's Name & Address (where applicable)

Bradshaw Rowse Harker
Martins Building 4 Water Street Liverpool L2 3TY

Location

Land Bounded By Dyche Street/Ludgate St/ Simpson Street/Sharp Street Ancoats

Proposal

Residential development of 108 no. units

Ward(s)

Central Ward

Decision

Approved

Date of Decision

08 Apr 2004

Conditions and Reasons:

1) The development must be begun not later than the expiration of five years beginning with the date of this permission.

Reason - Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2) The development hereby approved shall be carried out in accordance with the drawings numbered 0094/DD/101A, 0094/DD/102A, 0094/DD/103A, 0094/DD/104A, 0094/DD/105A, 0094/DD/106A, 0094/DD/107A, 0094/DD/108, 0094/DD/109, 0094/DD/110, 0094/DD/111, 0094/DD/112, 0094/DD/113, 0094/DD/114, 0094/DD/115, unless otherwise agreed in writing by the City Council as Local Planning Authority.

Reason - To ensure that the development is carried out in accordance with the approved plans and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

3) Construction of the works hereby approved by this permission shall not take place unless and until samples and specifications of the materials to be used on all external elevations of the development have been submitted to and approved in writing by the City Council as local planning authority. The development shall be constructed only using the approved materials unless otherwise agreed in writing by the City Council as local planning authority.

Reason

To ensure that the appearance of the development is acceptable to the City Council as local planning authority in the interests of the visual amenity of the area within which the site is located and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

4) No part of the development hereby granted permission shall be commenced until a survey has been conducted to investigate whether the buildings are inhabited by protected species, and the survey results passed to the local planning authority. If the presence of bats or barn owls is established, a scheme for the protection of the wildlife habitat shall be submitted to and agreed in writing by the City Council as local planning authority before work commences.

Reason - To ensure the protection of habitat of protected species which are protected species under the Wildlife and Countryside Act 1981 and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

5) The development hereby approved shall include a building lighting scheme and a scheme for the illumination of external areas during the period between dusk and dawn, or as may be otherwise agreed in writing by the City Council as local planning authority. Full details of such a scheme shall be submitted to and approved in writing by the local planning authority before the development commences. The approved scheme shall be implemented in full before the development is first occupied unless otherwise agreed in writing by the local planning authority.

Reason - In the interests of amenity, crime reduction and the personal safety of those using the proposed development and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

6) Before the development hereby approved commences a report to assess the likely extent of any ground contamination and/or ground gas being present on or affecting the site shall be submitted to and approved in writing by the City Council as local planning authority. Any necessary site investigations shall then be carried out according to a scheme to be agreed in advance with the City Council as local planning authority and implemented in accordance with the approved scheme.

Reason - To ensure that the presence of or the potential for any contaminated land/ground gas is detected, appropriate remedial action is taken in the interests of public safety and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

7) Before the development hereby approved commences, details of appropriate and comprehensive construction designs to alleviate the ingress of landfill gas shall be submitted to and approved in writing by the City Council as local planning authority. The development shall incorporate the approved details unless otherwise agreed in writing by the City Council as local planning authority.

Reason - To alleviate the risk of landfill gas ingress into the building and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

8) The car parking provision indicated on the approved plans shall be surfaced, demarcated and made available for use prior to the building hereby approved being occupied. The car park shall then be available at all times whilst the site is occupied.

Reason - To ensure that there is adequate car parking for the development proposed when the building is occupied and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

9) No part of the development shall be occupied until space and facilities for bicycle parking have been provided in accordance with details to be submitted to and approved in writing by the City Council as local planning authority. These facilities shall then be retained and permanently reserved for bicycle parking.

Reason - To ensure that adequate provision is made for bicycle parking so that persons occupying or visiting the development have a range of options in relation to mode of transport and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

10) Before the development hereby approved commences a scheme for the storage and disposal of refuse shall be submitted to and approved in writing by the City Council as Local Planning Authority. The details of the approved scheme shall be implemented as part of the development and shall remain in situ whilst the use or development is in operation.

Reason - In the interests of amenity and public health and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

11) Before the development hereby approved commences, the building, together with any externally mounted ancillary equipment, shall be acoustically insulated in accordance with a scheme submitted to and approved in writing by the City Council as local planning authority in order to secure a reduction in the level of noise emanating from the equipment.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

12) Before the development commences a scheme for acoustically insulating the proposed residential accommodation against noise from the nearby electricity substation and Rochdale Road shall be submitted to and approved in writing by the City Council as local planning authority. The approved noise insulation scheme shall be completed before any of the dwelling units are occupied.

Reason - To secure a reduction in noise from the nearby electricity substation and Rochdale Road in order to protect future residents from noise nuisance and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

13) The development hereby approved shall incorporate measures to minimise the risk of crime and to meet the specific security needs of the application site and the development. Any security measures to be implemented in compliance with this condition shall seek to achieve the 'Secure by Design' accreditation awarded by the Greater Manchester Police.

Reason - In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area in pursuance of the Council's powers under section 2 of the Local Government Act 2000, to reflect the guidance contained in Circular 5/94 'Planning Out Crime' and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

14) All vehicles entering and leaving the site during the construction period are to pass through a wheel wash and be sheeted. Details of the wheel wash shall be submitted to and approved in writing by the City Council as local planning authority prior to the development commencing.

Reason - To ensure that the proposed development does not cause unacceptable amounts of dust in the vicinity and to ensure that local roads are kept clear of mud and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

15) The applicant shall, with regard to television reception in the area containing the application site, provide the City Council as local planning authority with studies that:

a) Measure the existing television signal reception within the potential impact area, [as identified in the ... report dated ..., and within an area of 500 metres radius surrounding the building]*, before development commences. The work shall be undertaken either by an aerial installer registered with the Confederation of Aerial Industries or by a body approved by the Independent Television Commission, and shall include an assessment of the survey results obtained.

b) Assess the impact of the development on television signal reception within the potential impact area identified in (a) above within one month of the practical completion of the development or before the development is first occupied, whichever is the sooner, and at any other time during the construction of the development if requested in writing by the City Council as local planning authority in response to identified television signal reception problems within the potential impact area. The study shall identify such measures necessary to maintain at least the pre-existing level and quality of signal reception identified in the survey carried out in (a) above. The measures identified must be carried out either before the building is first occupied or within one month of the study being submitted to the City Council as local planning authority, whichever is the earlier.

Reason - To provide an indication of the area of television signal reception likely to be affected by the development to provide a basis on which to assess the extent to which the development during construction and once built, will affect television reception and to ensure that the development at least maintains the existing level and quality of television signal reception, as advised in Planning Policy Guidance Note 8: Telecommunications.

*[] Insert appropriate reference and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

16) The details of an emergency telephone contact number shall be displayed in a publicly accessible location on the site and shall remain so displayed unless otherwise agreed in writing by the City Council as local planning authority.

Reason - In the interests of local amenity and to conform with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester UDP.

17) Approve on the basis that the proposals are in accordance with policies H1.2, H2.1, H2.2, H2.7 and H2.8 of the Manchester Unitary Development Plan and that there are no other material considerations of sufficient weight to indicate otherwise.

APPENDIX 3

