

Supporting Statement

Former Oak Park School, River Way, Havant, PO9 2EL

1. INTRODUCTION

- 1.1. This Supporting Statement is submitted in support of an application for a Certificate of Lawfulness of Existing Development (CLUED) under section 191 of the Town and Country Planning Act 1990. The purpose of the application is to establish that the implementation and continued use of the development at Former Oak Park School, River Way, Havant, PO9 2EL (**the Site**) is lawful, in line with planning applications APP/15/00303 (Full Planning Permission) and APP/18/00845 (variation/removal of pre-commencement conditions relating to the Full Planning Permission).
- 1.2. The site is owned by Hampshire County Council (HCC) who commenced development on site. The County Council seeks a certificate confirming that the works for constructing part of a road were material operations effective to implement the planning permission in Section 2 below and formal record that the same permission thereby remains extant.
- 1.3. The County Council provides documentary and photographic evidence to demonstrate that the material operations lawfully implemented the planning permission.

2. SITE AND DEVELOPMENT HISTORY

- 2.1. The planning history relevant to this application is as follows:

- 2.1.1. On 18/12/2015 Havant Borough Council (**HBC or LPA**) granted Full Planning Permission (**FPP**) under reference **APP/15/00303** following an application made by the Applicant (Hampshire Living Space) on 16/03/2015. Hampshire Living Space was a consortium comprised of Ashley House Plc, Home Group, and HC-One. The consortium was awarded the opportunity to develop a health and well-being campus to completion (Ashley House Plc). Upon completion, the intention was for the care / housing management providers (Home Group, HC-One) to take over the running of the site. The description of development for which permission was granted is as follows:

“Havant Health and Well-Being Campus, comprising an 80-bed nursing home, 51 affordable extra care flats, 48 affordable and market supported living flats, community hub facilities, landscaped amenity gardens, car parking, with vehicular access from River Way and Leigh Road and pedestrian access from Lavant Drive and Crossland Drive with associated infrastructure.”

- 2.1.2. The FPP was granted subject to conditions, including:

- (a) **Condition 1.** The development hereby permitted shall be begun before the expiration of 3 years from the date on which this planning permission was granted. **Reason:** To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2.1.3.** The FPP additionally includes pre-commencement planning conditions 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24 and 25.

Following permission, for a variety of reasons, the commissioning process took longer than expected for this significant corporate scheme. Following discussions internally and with HBC, it was considered appropriate to submit an application to vary the permission before it expired. This would allow the associated access and service yard to be approved and constructed prior to the more detailed and extensive pre-commencement conditions that required input from the final developer and service user.

- 2.1.4.** On 02/11/2018, HBC granted approval (with conditions) under reference **APP/18/00845** for:

Variation of outstanding pre-commencement conditions 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 22, 23, 24 and 25 of planning permission APP/15/00303 (Havant Health and Well-Being Campus) by the addition of the words "With the exception of the minor access works and service yard shown on drawing no. 598-PL-103" at the beginning of the relevant pre-commencement conditions and removal of duplicated condition 16 to allow for early construction of minor access works and service yard.

- 2.1.5.** This variation of the original planning permission was granted approval, subject to:

- (a) **Condition 1.** The development must be begun not later than 18th December 2018. **Reason:** To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- (b) **Condition 2.** The development hereby permitted shall be carried out in accordance with the following approved plans:

Minor Access Works and Service Yard Plans:

Location Plan Drawing No. 598-PL-104 Rev B

Proposed Site Plan Drawing No. 508-PL-101

Proposed Service Yard Area Drawing No. 598_PL-103 Rev A

& Plans associated with FPP AP/15/00303

Documents:**Minor Access Works and Service Yard Documents:**

Planning Supporting Statement August 2018 as amended by updated paragraph 3.27 and Appendix A

Technical note Service Area Drainage Strategy Ref: A048-R04

Letter from Hampshire County Council providing further information in relation to use of the service yard dated 10th October 2018

- 2.2.** These permissions and documents are all available on the LPA's planning register.

3. LAWFUL IMPLEMENTATION AND COMMENCEMENT

Following permission to vary the conditions of the FPP, works were commissioned and implemented on site to create the access and part of the service yard. These works were within the 3 years of the FPP and considered to implement the permission. The County Council now wish this to be formally recognised through this process.

Timeline and documents

All documents referenced below are included in this CLUED application in full or redacted (for GDPR reasons) form:

- 02/11/2018 – Decision Notice (Appendix F) – HBC Grants Planning Permission for APP/18/00845 (application includes Service Yard Technical Note (Appendix A) and associated technical drawings (Appendix B)) (Condition 1 sets out that development must commence prior to 18/12/2018).
- 19/11/2018 – Development commences at the site.
- 07/12/2018 – HCC employee Rosie Roome shares a letter (Appendix J) via email (with attached photos of works completed at the site) which informs HBC that development had commenced at the site, from the date 19/11/2018.
- 03/01/2019 – HCC (Rosie Roome) receives email correspondence (Appendix K) from David Eaves (HBC) which confirms his view - in response to the letter / photographs - that 'development commenced in line with the requirements of Section 56 of the Town and Country Planning Act 1990 prior to the expiry of planning permission on the 18th December 2018.'

- 3.1.** The approved development was lawfully commenced on 19/11/2018 through implementation of highways works (Phase 1) authorised by APP/18/00845.

The material operations sufficient to commence the permission, within the meaning of section 56 of the TCPA 1990, occurred on this date.

- 3.2.** Works have taken place at the site, in the form of constructing part of a road.

- 3.3. The works undertaken were referable to and consistent with the plans/documents supporting the removal/variation of conditions application (APP/18/00845).
- 3.4. The extent and nature of the works demonstrate more than de minimis activity and constitute a lawful commencement which has preserved the permission (under APP/15/00303 and APP/18/00845);

4. COMPLIANCE WITH PLANNING PERMISSION AND CONDITIONS

- 4.1. Section 56 of the Act sets out that development shall be taken to have begun on the earliest date on which any material operation comprised in the development begins to be carried out. Subsection (4) defines 'material operation'; this includes at subsection (d) "any operation in the course of laying out or constructing a road or part of a road".
- 4.2. The Material Operations as built to date accord with the approved plans and conditions attached to permission APP/18/00845. The email letter (attached document) dated 7th December 2018 outlines that works for the construction of part of a road commenced on 19th November 2018.
- 4.3. Pre-commencement conditions relating to the access and service yard were discharged prior to commencement as evidenced by approvals available on the LPA's planning register. The remaining pre-commencement conditions will be satisfied before commencement of any other elements of the permission.
- 4.4. Any pre-occupation conditions will be satisfied prior to first use of the development.
- 4.5. There have been no breaches of condition, operational deviations, or changes of use outside the scope of the permission. No enforcement notices have been served, and no breach of condition notices have been issued.

5. LEGAL FRAMEWORK AND BURDEN OF PROOF

- 5.1. Under section 191 of the Town and Country Planning Act 1990 and associated provisions, the test is whether, on the balance of probabilities, the use or operations are lawful. The Applicant's evidence is sufficiently precise and unambiguous to discharge that burden. In accordance with established practice, where the Applicant's evidence is unchallenged and credible, it should be accepted. The decision turns on evidence rather than planning merits. The accompanying documentary exhibits meet the requisite evidential standard.

6. PLANS, DRAWINGS AND IDENTIFICATION OF THE LAND

- 6.1. A site location plan at 1:1250 is provided, edged in red to identify the land to which the application relates.

7. CONCLUSION

- 7.1. The evidence demonstrates that the development was lawfully implemented pursuant to planning permissions APP/15/00303 and APP/18/00845, with valid commencement occurring on 19/11/2018, within the timeframe set out in Condition 1 for the latter permission (APP/18/00845) and constructed in accordance with the approved plans and conditions, as required by Condition 2 (again, of the latter permission). Therefore, the Local Planning Authority is respectfully invited to grant Hampshire County Council a Certificate of Lawful Existing Use or Development confirming the lawful implementation of development associated with planning permissions APP/15/00303 & APP/18/00845.

8. SUPPORTING DOCUMENTS

- 8.1. Evidence submitted (chronological order):

- (Appendix A) Technical drawing associated with APP/18/00845 (submitted with application 29/08/2018)
- (Appendix B) Technical note associated with APP/18/00845 (submitted with application 29/08/2018)
- (Appendix C) Location plan associated with APP/18/00845 (submitted with application 29/08/2018)
- (Appendix D) Amendment to planning statement associated with APP/18/00845 (submitted with application 29/08/2018)
- (Appendix E) Tender document (some information redacted) with Rocon Contractors for works at the site (in line with technical drawings & notes associated with permission APP/18/00845 (Appendix A)) (01/10/2018)
- (Appendix F) Decision Notice (from HBC) (dated 02/11/2018)
- (Appendix G) Schedule of works (some information redacted) provided by Rocon Contractors (undated)
- (Appendix H) CIL Commencement Notice (for APP/18/00845) (19/11/2018)
- (Appendix I) Site photographs (sent to HBC 07/12/2018)
- (Appendix J) Letter of correspondence between HCC & HBC, notifying HBC of the commencement of development (07/12/2018)
- (Appendix K) Email confirmation from David Eaves (then Principal Planning Officer at Havant borough Council) confirming his view to

HCC (Rosie Roome) that the works had been implemented / development commenced (03/01/2019)

- (Appendix L) Invoice received from Rocon Contractors for works commissioned / completed at the site (for works in line with technical drawings & notes associated with APP/18/00845 (Appendix A)) (02/12/2019)
- (Appendix M) Final account statement for works completed by Rocon Contractors (6/12/2019)

8.2. Additional documents submitted:

- Red Line Location Plan
- Decision Notice associated with APP/15/00303