



Our Ref: JWID2297/L079

29th February 2024

Planning Department
South Holland District Council
Priory Road
Spalding
Lincolnshire
PE11 2XE

Dear Sir/ Madam

Planning Portal Ref: PP-12824794

APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT – LAWFUL IMPLEMENTATION OF PLANNING PERMISSION REFERENCE H16-0104-20 (2021 PERMISSION) AS VARIED BY H16-0879-23 (2024 PERMISSION).

SITE AT SPRINGFIELDS OUTLET CENTRE, CAMEL GATE, SPALDING.

We act for Triton Property Fund c/o SLR Outlets Ltd in relation to the above site and are instructed to submit an application for a Certificate of Lawful Development (LDC) for the Lawful implementation of planning permission reference H16-0104-20 (2021 Permission) as varied by H16-0879-23 (2024 Permission). The description of development for the H16-0104-20 is the following:

“Proposed Extension of Springfields Outlet Shopping & Leisure, to comprise demolition of the existing NFU Mutual offices and provision of comparison retail floorspace (Class A1), flexible retail and/or coffee shops/restaurants floorspace (Class A1/A3), access, revised car parking, landscaping and associated works approved under H16-0104-20.”

The original H16-0104-20 Permission was granted on the 4th of February 2021.

The variation of the permission (H16-0879-23) was granted on the 9th of January 2024.

Condition 1 of H16-0879-23 confirmed the development was to commence no later than the expiration of three years beginning with the date of the permission, by 4th February 2024, as per the original permission (H16-0104-20).

The first phase of the H16-0879-23 masterplan is the small expansion of the existing staff car park (2 spaces) in the western part of the site, as per Ref.SPFDS-WBA-SI-ZZ-DR-A-90_102 Rev P6 plan dated the 29th of January 2019. This phase of development began construction on the 17th of January 2024, as stated within the submitted evidence within this application submission and therefore the proposed development has now been lawfully implemented. The next section will provide the legal context and analysis of the proposed lawful implementation.

Legal Context and Analysis

As set out in the attached legal advice note provided by CMS (Cameron McKenna Nabarro Olswang LLP), Section 191 of the Town and Country Planning Act 1990 (as amended) (**Act**), allows applications to the Local Planning Authority for the issue of Certificates of Lawfulness for Existing Use or Development.

This provides a statutory mechanism for obtaining confirmation that, inter alia, operations constitute lawful development.

Lawful implementation of planning permission reference H16-0104-20 (2021 Permission) as varied by H16-0879-23 (2024 Permission) by carrying out a material operation comprised in the development pursuant to the 2024 Permission, before 4th February 2024 (the deadline in condition 1 of both the 2021 Permission and 2024 Permission), will preserve the 2024 Permission in perpetuity.

Section 56(1)(a) of the Act provides that development of land shall be taken to be initiated: *“if the development consists of the carrying out of operations, at the time those operations begun”*.

Section 56(2) of the Act provides 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”*.

Material Operation: the term *“material operation”* is defined in Section 56(4) of the Act: *“... “material operation” means –*

- (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 any such trench as is mentioned in paragraph (b);*
- (d) any operation in the course of laying out or constructing a road or part of a road;*
- (e) any change in the use of any land which constitutes material development”*.

Section 336(1) of the Act provides that the term *“building”*: *“includes any structures or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building”*.

Given the above, there can be no doubt that the Works (see below) are a *material* operation under s56(4) of the Act comprised in the development pursuant to the Permission.

The general approach of the Courts in respect of lawful implementation of planning permissions, as set out in *Malvern Hills District Council v Secretary of State for the Environment* {1982} 3 WLUK 272 and subsequent cases, has been that the operations undertaken need not be particularly extensive in order to lawfully implement a planning permission.

Operations comprising works carried out in accordance with the relevant planning permission, that are more than trivial (or not *de minimis*), and which, objectively, constitute a material operation comprised in the development authorised by the Permission, will be sufficient to lawfully implement the Permission. For example, in *Malvern Hills* simply pegging out of an

access way to the development site was sufficient and in *Thayer v Secretary of State for the Environment* {1992} JPL 264 opening a gap in a hedge and limited ground works relating to the provision of an access was sufficient to lawfully implement the planning permission. As shown on the attached drawings and photographs, the Works on 17th January 2024 are plainly more than trivial or de minimis. In addition, the Council is requested to note that in connection with the Works:

- The Applicant instructed, through its project manager, a contractor (Lumley) to carry out the installation of the two car parking spaces at the Property (**Works**);
- The contractor installed safety equipment in connection with the Works and planned out the road surface;
- The Works were delivered over several days by a team employed by the contractor (see attached Site Diaries); and
- The contractor carried out the Works in close consultation with the applicant's wider team of professional designers and consultants.

The Works are works to construct two car parking spaces comprised in the development pursuant to the Permission and are therefore a "material operation" for the purposes of Section 56(4) of the Act.

Comprised in the Development

In the case of *Commercial Land v Secretary of State for Transport, Local Government and Regions* (2002) EWHC 1264 {Admin}, the expression operations "*comprised in the development*" is used to explain the connection between the operations and the development authorised by the planning permission. Whether what has been done satisfies that test is initially a matter of planning judgement for the Council as the statutory local planning authority. Section 56 of the Act (as above) gives clear guidance as to the kinds of operations which are sufficient to meet the statutory test. Guidance in caselaw suggests that this is not an exclusive list of possible material operations.

The Works are clearly shown on plans approved by the Council pursuant to the Permission (see attached Masterplan drawings relating to new car parking). It is clear that the Works are "*comprised in the development*" and as such conform to the statutory tests.

Lawful Implementation

For the implementation to be lawful, the pre-commencement conditions attached to the relevant planning permission must be discharged and that was the case in this instance and with respect to the Phase 1 works to provide the two additional staff car parking spaces.

Evidence of the Works

Evidence of the works being undertaken has been submitted within this application within the site diaries dated 17-22nd of January.

Conclusion

Taking into account the submitted evidence and the provisions of Section 56 of the Town and Country Planning Act 1990, we consider the information submitted to be sufficient to demonstrate the Lawful implementation of planning permission reference H16-0104-20 (2021

Permission) as varied by H16-0879-23 (2024 Permission) by carrying out a material operation comprised in the development pursuant to the 2024 Permission, before 4th February 2024 (the deadline in condition 1 of both the 2021 Permission and 2024 Permission), will preserve the 2024 Permission in perpetuity.

The submission includes the following details:

1. Application forms;
2. Site Location Plan 1:1250;
3. Evidence of site work (Site Diaries Dates, 17-22 of January);
4. Evidence of lawful implementation within the covering letter;
5. CMS Cameron McKenna Nabarro Olswang LLP Advice Note, dated 28th February 2024;
6. Planning Permission for H16-0879-23 and H16-0104-20; and
7. Approved Phasing Plan from the H16-0879-23 application (SPFDS-WBA-SI-ZZ-DR-A-90_102 Rev P6).

We trust the above is sufficient to validate the application. If you require any additional information at this stage, please do not hesitate to contact me.

Yours faithfully

Matthew Kettleborough

**Matthew Kettleborough MSc
Planner**

Enc – as detailed above