

**SPRINGFIELDS OUTLET CENTRE, CAMEL GATE, SPALDING**

**S191 TOWN AND COUNTRY PLANNING ACT 1990**

**LAWFUL DEVELOPMENT CERTIFICATE**

**PLANNING PERMISSION H16-0104-20 (2021 PERMISSION)**

**AS VARIED BY H16-0879-23 (2024 PERMISSION)**

**1. Legal Context and Analysis**

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 planed 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.

## 2. 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.

**3. Lawful Implementation**

For the implementation to be lawful, the pre-commencement conditions attached to the relevant planning permission must be discharged.

**CMS CAMERON MCKENNA NABARRO OLSWANG LLP**

**28 FEBRUARY 2024**