Supporting Statement - Certificate of Lawfulness (Development)

Land south of High Street, Royston, Barnsley



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1. Introduction

1.1. This statement has been prepared on behalf of Aldi Stores Ltd in support of an application for a Certificate of Lawful Development made in connection with Section 191(2) of the Town and Country Planning Act 1990 (as amended). The site known as Land south of the High Street in Royston in Barnsley (the site subject of this application) is owned by the applicant (Aldi Stores Ltd).

1.2. The application for the Certificate of Lawfulness is submitted to Barnsley Metropolitan Borough Council to confirm that the permission has been lawfully implemented through. In preparing the application, Article 39 of Town and Country Planning (Development Management Procedure) (England) Order 2015 has influenced the content.

1.3. Planning permission was originally granted for the erection of a new retail store, associated works and erection of a residential development (2014/0318) in June 2014. A revised application, seeking just the erection of a new retail store and associated works (and therefore omitting the residential aspect) was approved in January 2015, under reference 2014/1528. A copy of the decision notice is attached at **Appendix 1**.

1.4. Since then, an application (app ref: 2017/1362) seeking the discharge of a number of conditions was approved in May 2018, testament to Aldi's commitment to bringing this store forward.

1.5. Our client is currently in the process of negotiating contractors of the site to a builder / developer who will undertake the building works on site and complete the construction of the proposed Aldi foodstore.

1.6. However, prior to progressing with the construction of the foodstore, the Council has requested that we obtain a Certificate of Lawfulness to demonstrate that the planning consent has been lawfully implemented. This application, supplemented by a collection of evidence, illustrates that through the commencement of works before 28 January, the permission has been implemented and that the site benefits from planning consent.

2. Site Description

2.1. The application site is located south of the High Street, a key arterial route from the west into Royston district centre which lies approximately 170m to the east of the application site.

2.2. The site is a cleared brownfield site and the red line / site area remains the same as that originally approved.

3. Planning History

3.1. Planning permission was originally granted for the erection of a new retail store, associated works and erection of a residential development (2014/0318) in June 2014. A revised application, seeking just the erection of a new retail store and associated works (and therefore omitting the residential aspect) was approved in January 2015, under reference 2014/1528.

3.2. Since then, an application (app ref: 2017/1362) seeking the discharge of a number of conditions was approved in May 2018.

3.3. The conditions related to:

- Condition 3 External Materials
- Condition 7 Drainage
- Condition 10 Construction Method Statement
- Condition 13 Tree Protection Plan
- Condition 15 Contamination Assessment
- Condition 17 Ground Conditions / Mining
- Condition 20 Highways Survey
- Condition 22 Highway Improvements
- Condition 23 Highway Retaining Structures

3.4. All of the relevant conditions have therefore been discharged.

4. Legal Framework

The Town and Country Planning Act 1990

4.1. This application is submitted under the provisions of S191 of the Town & Country Planning Act 1990. Section 191 paragraph (1) and (4) outlines (inter-alia) how a Certificate of Lawfulness application is appropriate and paragraph (5) confirms what a certificate should confirm:

(1) 'if any person wishes to ascertain whether-

(a) Any existing use of buildings or other land is lawful;

(b) Any operations which have been 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 to the local planning authority specifying the land and describing the use or operations in questions.

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

(5) A certificate under this section shall –

(a) Specify the land to which it relates;

(b) Describe the land use, operations or other matter in operation

(c) Give the reasons for determining the use, operations or other matter to be lawful; and

(d) Specify the date of the application for the certificate

4.2. Section 56 of the Town and Country Planning Act (1990) outlines that a planning permission is legally implemented by the carrying out of a 'material operation'. Section 56 (1a) states that the works must be done within the time period expressed on the permission and in line with what the permission has been granted for.

4.3. In regards to this application, reference is therefore made to the legal requirements in Section 56(4) of the Town and Country Planning Act (1990), which defines 'material operation' as:

(a) Any work of construction in the course of the erection of a building;

(aa) Any work of demotion of a building (S. 56)(4)(aa) inserted (27.7.1992) by Planning and Compensations Act 1991 Sch. 7 para. 10(2));

(b) The digging of a trench which is to contain the foundation, 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.

4.4. It is part 'd' that is relevant to this statement.

National Planning Practice Guidance (NPPG)

4.5. Paragraph 001 of the NPPG, under guidance for Lawful Development Certificates states…..'there are two types of lawful development certificates. A local planning authority can grant a certificate confirming that:

(a) An existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990; or

(b) A proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.'

4.6. It is part 'a' which is of relevance to this statement.

4.7. The guidance states that at Paragraph 006 of the NPPG, under Lawful Development Certificate, that:

'the applicant is responsible for providing sufficient information to support an application, although a local authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land.'

5. Evidence of Implementation of Consent

5.1. The information below forms the evidence to the application for the Certificate of Lawfulness. The evidence can be seen within the appendices, and includes:

- A decision notice approving a discharge of conditions application that was submitted in October 2017.
- Completed induction form from HH Construction Groundworks Contractors Ltd (The Contractors) confirming inductions took place on 26 January 2018 prior to works commencing.
- A delivery ticket dated 26 January 2018.
- An invoice for the work completed by HH Construction Groundworks Contractors Ltd, confirming the start on site (26 January 2018).
- Images of the completed site works.

5.2. In October 2017, an application seeking to discharge a number of conditions attached to the approval – 'erection of a foodstore with parking, landscaping and associated works' (app ref 2014/1528) – was submitted. The application covers a wide range of works, including drainage, a construction method statement and highways works. This application demonstrates Aldi's statement of intent of starting works prior to 28 January 2018.

5.3. On 26 January 2018, inductions were completed by HH Construction Groundworks Contractors Ltd (The Contractors). An example of the induction paperwork can be seen in Appendix 2. The form is dated 26 January 2018. The site induction communicates essential information regarding the site, the working methods and health and safety management. It was carried out ahead of works starting later that day.

5.4. On the same day, materials were delivered to site and a delivery ticket produced by HH Construction Groundworkds Contracts Ltd verifying this can be seen at Appendix 3.

5.5. The site works to construct the site access road commenced on 26 January 2018. Part 'd' of Section 56(4) of the Town and Country Planning Act (1990), states that a consent is implemented by 'any operation in the course of laying out or constructing a road of part of a road'.

5.6. On 16 February, HH Construction Groundworks Ltd issued their invoice (Appendix 4) to Aldi for the complete access road. The description within the invoice confirms the work started on site on 26 January 2018.

5.7. The works to the access road can be seen in Appendix 5.

Figure 1: The construction of the approved access road



Source: HH Construction Groundworks Ltd

5.8. It is therefore evident that works on site commenced before 26 January 2018 and the scheme was implemented before the expiration of three year date of the original permission (app ref: 2014/1528).

6. Conclusion

6.1. The planning consent for the development was approved on 28 January 2015 under planning reference 2014/1528. Condition 1 of the permission states:

'The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission'.

6.2. In accordance with the planning condition, the development would therefore need to be begun prior to 28 January 2018.

6.3. The evidence detailed in Section 5 and the appendices of this statement confirms that site works to construct the approved access road commenced prior to this date.

6.4. Therefore in this case, the evidence submitted is considered to be conclusive in terms of the lawfulness of the development, confirming that the existing development commenced prior to the expiry of the planning consent. The proposed development for erection of food retail store with associated car parking and landscaping is therefore lawful for planning purposes.

6.5. In light of the above, and in order to allow building works to commence, we respectfully request that the Certificate of Lawfulness for the development is granted.