

STATEMENT OF CASE

***‘To confirm that a Lawful Commencement
of Planning Permission reference
DM/20/2661 has occurred’***

**Rockwood, Tylers Green, Cuckfield,
Haywards Heath, West Sussex, RH17 5DZ**

December 2024

1.0 INTRODUCTION

- 1.1 We are instructed on behalf of our client, Mr. John Marland, to submit to Mid Sussex District Council (MSDC) a Lawful Development Certificate to establish that an approved development has been lawfully commenced at Rockwood, Tylers Green, Cuckfield.
- 1.2 This application relates to a Certificate of Lawfulness of Existing use of Development (CLEUD) pursuant to 192(1) of the Town and Country Planning Act 1990 (as amended). The application seeks a CLEUD to establish the lawful implementation of Planning Permission **DM/20/2661** for *'demolition of existing building comprising building (comprising 2 x existing dwellings, following approval of lawful development certificate DM/21/1367) and garage, and replacement with 2 x 4 bed detached dwellings with garaging'*, relating to land at Rookwood, Tylers Green.
- 1.3 This statement sets out a brief history of the property and then addresses the legal basis for the application and the evidence submitted to justify the facts of the case.
- 1.4 We consider that this evidence sufficiently demonstrates, on the balance of probability, that a lawful start has been made to implement planning permission **DM/20/2661** and accordingly the LDC should be granted. As such, the remaining development approved under this reference can be lawfully carried out.

2.0 SITE DESCRIPTION

- 2.1 Prior to the demolition works being carried out, the site comprised a single storey building, positioned to the north side of Tylers Green.
- 2.2 It was previously established that the existing building (which has since been demolished) comprised of 2 No. dwellings. This was confirmed by the Local Planning Authority via the approval of a lawful development certificate relating to the existing use (MSDC reference: **DM/21/1367**) on 27th May 2021.
- 2.3 The site is triangular in shape and bordered to all three sides by close boarded fencing and mature planting and trees. It is accessed via a gated entrance to the eastern corner, with a shared access onto the highway with the adjacent neighbouring property; Stoneacres. There are public footpaths extending parallel with the western and northern boundaries of the site.
- 2.4 The site is located at the edge of a ribbon of residential properties along the highway with undeveloped land to the west. The residential properties within the locality vary in form, scale and design. Many neighbouring properties are characterised by mature front boundary planting to their site frontages.
- 2.5 In terms of site designations, the site is located outside of any defined built up area boundary within designated countryside. In addition, it lies adjacent to an Archaeological Notification Area.

3.0 PLANNING HISTORY

- 3.1 This Lawful Development Certificate relates to the following planning application:-
- **Ref: DM/20/26661/:** Demolition of existing building (comprising 2 x existing dwellings, following approval of lawful development certificate DM/21/1367) and garage, and replacement with 2 x 4-bed detached dwellings with garaging.
- 3.2 The application was approved planning permission subject to conditions, via decision notice dated 29th September 2021. Condition 1 attached to this permission read as follows:-
- "1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission. Reason: To comply with Section 91 of the Town and Country Planning Act 1990".*
- 3.3 The site also has the following planning history:-
- **Planning ref: DM/24/2030/:** Variation of condition 5 of planning application DM/20/2661 – to vary the wording of condition 5. Withdrawn 24.09.2024.
 - **Planning ref: DM/24/2026/:** Discharge of condition 5 in regards to DM/20/2661. Approved 16.09.2024.
 - **Planning ref: DM/24/1815/:** Discharge of planning conditions No's 3 and 4 relating to planning application DM/20/2661. Approved 16.08.2024.
 - **Planning ref: DM/21/1367/:** Use of an existing building (Rookwood) as 2 no. independent dwelling houses. Approved 27.05.2021.
 - **Planning ref: CU/074/84/:** Erection of 3 detached houses. Refused 06.07.1984.
 - **Planning ref: CU/060/80/:** Part reconstruction of area damaged by fire, including bathroom, utility room, W.C and conservatory. Approved 19.03.1980.

4.0 CONSIDERATIONS

Legal Background

- 4.1 The relevant law for determining a CLEUD application is contained in section 191 of the Town and Country Planning Act 1990 ("TCPA 1990") (as amended). Section 191(4) provides 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...they shall issue a certificate to that effect..."

- 4.2 Section 192(1) of the Act states: *"If any person wishes to ascertain whether-
...any proposed use of buildings or other land; or
any operations proposed to be carried out in, on, over or under land,
would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question."*

- 4.3 The Planning Practice Guidance (PPG) states:
"if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability" (Paragraph 006 Reference ID: c-006-20140306).

- 4.4 To implement a planning permission the developer must:
- Carry out a *"material operation"* (as defined in section 56 of the TCPA 1990); and
 - Ensure all planning conditions requiring compliance prior to commencement of development have been complied with.

4.5 Development is commenced when a ‘material operation’, as defined in the Act has been carried out. Section 56(4) of the Act gives the following (non-exhaustive) examples of material operations:

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

4.6 Any works capable of constituting a material operation implement a planning permission, provided that they:

- relate to the planning permission i.e. they are ‘comprised in the development’ within the meaning of s56(2) of the Act;
- are authorised by the planning permission; and
- involve building operations which are more than de minimis.

4.7 The above planning permission was subject to a number of conditions, such as a 3-year time limit to implement it (running until 29th September 2024) (condition 1).

4.8 There were 3 pre-commencement conditions, which were discharged as follows:

- **Condition 3** – Schedule of External Materials. Confirmed as discharged via approval decision DM/24/1815, dated 16th August 2024
- **Condition 4** – Hard and Soft Landscaping. Confirmed as discharged via approval decision DM/24/1815, dated 16th August 2024

- **Condition 5** – Foul and Surface Water Drainage. Confirmed as discharged via approval decision DM/24/2026, dated 16th September 2024
- 4.9 The original planning permission (**DM/20/2661**) for the development of the Site does not include any other conditions or formal requirements that are subject to pre-commencement discharge.
- 4.10 In terms of the on-site works that have occurred since planning permission was granted in September 2021, Planning Officers may be aware that the site has been cleared with the original buildings demolished and removed from the site. Our Client has confirmed to us that these demolition works were started on 8th November 2022.
- 4.11 Allied to this work, we bring to Officer's attention correspondence from MSDC Building Control, dated 28th October 2022. A letter was issued under the Building Act 1984 (Section 81), and confirms acceptance of the demolition works, and provides a schedule of conditions that relate to those works (refer to evidence section below).
- 4.12 Subsequently, on 22nd August 2023, the MSDC Street Naming and Numbering Officer wrote to the owners of the Site, to confirm address allocation for the two new dwellings ('Rookwood' and 'Fairways').
- 4.13 Given that demolition is included within the description detailed on the Decision Notice it is our opinion that demolition of the original buildings on the site is sufficient to amount to implementation (and therefore suffice to save the permission). This is because Section 56(1) of the Town & Country Planning Act 1990 confirms that development starts when a material operation is begun and "*material operation*" includes "*demolition*" (Section 56(4) refers). We are aware that there is case law also to support this position.

- 4.14 Therefore it is clear that works have commenced via the demolition of the existing buildings and all pre-commencement conditions were discharged prior to the permission lapsing on 29th September 2024. The demolition works constitute a material operation in planning terms, and therefore a lawful commencement of application DM/20/2661 (with associated discharge of conditions applications DM/24/1815 and DM/24/2026) has occurred. Consequently, our position is that the remaining development approved under this reference can be lawfully carried out.

Evidence

(i) Statutory Declaration by Mr. John Marland of Lower Jacobs Farm, signed and dated 10th December 2024

- 4.15 The Lawful Development Certificate is supported by a Statutory Declaration, which has been signed and dated 10th December 2024 by Mr. John Marland of Lower Jacobs Farm.
- 4.16 Mr., Marland states that he makes the statutory declaration from facts within his own knowledge except where otherwise stated. Where information has been passed to him by any person, then he has identified the source of my information and verily believe it to be true. He confirms that he is the Owner of the Property, together with Susan Marland. Mr, Marland confirms that he purchased the freehold of the property in 2010.
- 4.17 Mr. Marland states that during the course of his ownership they applied for planning permission with reference **DM/20/2661** for the demolition of existing building (comprising 2 x existing dwellings, following approval of lawful development certificate DM/21/1367) and garage, and replacement with 2 x 4-bed detached dwellings with garaging (“The Planning Permission”) to Mid Sussex District Council

("The Council"). The Planning Permission was approved by the Council on 29th September 2021.

- 4.18 The Planning Permission needed to be implemented 3 years from the date of the Planning Permission which would be 28 September 2024 and a copy of the decision notice is appended to his statutory declaration at Exhibit JM1.
- 4.19 Mr. Marland confirms that as part of the commencement of development, demolition works were required on the site. He instructed a company Best Demolition Limited to undertake the works. The Council issued a notice in accordance with the Building Act 1984 (Section 81) on the 28th October 2022 notifying Best Demolition Limited that the Council are satisfied demolition works are intended at the Property. This notice is appended to his Statutory Declaration at Exhibit JM5.
- 4.20 Mr. Marland confirmed that these demolition works began on the Property on 8th November 2022 and were completed on the 24th November 2022. Email confirmation of the dates that work was commenced and completed from Jo Hodgson the Office manager for Best Demolition, is appended to this Statutory Declaration at Exhibit JM2.
- 4.21 In addition, Mr. Marland has appended the invoice paid to Best Demolition Limited at Exhibit JM3 as well as photographs which show the Property both before and after the demolition works have taken place (Exhibit JM4). He confirms that all works of demolition were commenced and completed within the timeframe for implementation of the development.
- 4.22 Mr. Marland confirms that he made this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1835.

(ii) Decision Notice from Mid Sussex District Council

4.23 A decision notice from Mid Sussex District Council in relation to a planning application for 'demolition of existing building (comprising 2 x existing dwellings, following approval of lawful development certificate DM/21/1367) and garage, and replacement with 2 x 4-bed detached dwelling with garaging' at Rookwood, Tylers Green, Cuckfield, Haywards Heath (ref: DM/20/2661).

4.24 The notice is dated 29th September 2021 and details 13 no. Conditions and 3 No. Informatives.

4.25 Condition 1 reads as follows:-

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

Reason: To comply with Section 91 of the Town and Country Planning Act 1990".

(iii) Email and invoice from Jo Hodgson, Office Manager of Best Demolition Limited, dated 15th November 2024.

4.26 An emailed from Jo Hodgson, Office Manager of Best Demolition to John Marland, dated 15th November 2024.

4.27 The email reads as follows:-

"Good morning John,

I can confirm that works to demolish Rookwood, Tylers Green, Cuckfield, RH17 5DZ commenced on 8th November 2022 and were completed on 24th November 2022. All monies has been paid as per the attached statement and the account is clear.

Kind regards,

Jo Hodgson

Office Manager".

- 4.28 A statement is attached to the above email, addressed to Mr. John Marland, Lower Jacobs Farm from Best Demolition Limited and dated 15/11/2024. Reference MAR001. The statement details 2 No. payments on 28/11/2022 for demolition of Rookwood, Tylers and Deduct sum of £2,000 to return. A final payment on account was made on 02/12/2022. The final balance shown is £0.

(iv) Invoice from Best Demolition Limited to Mr. John Marland of Lower Jacobs Farm, dated 28/11/2022

- 4.29 Invoice from Best Demolition Limited to Mr. John Marland of Lower Jacobs Farm, dated 28/11/2022. The invoice has a total of £25,064.00. There is a handwritten note on the invoice that states 'paid electronically 2-12-22 £25,064.00'.

(V) Email from Julie Hodd, Administration Assistant of Best Demolition Limited to John Marland, dated 7th December 2022.

- 4.30 An email from Julie Hodd, Administration Assistant of Best Demolition Limited to John Marland, dated 7th December 2022. The email states:-

"Good afternoon,

Please find attached word document with photos of the demolition at Rookwood, we do have more, but they are all very similar.

If you need anything else please do not hesitate to contact us.

Kind regards,

Julie Hodd

Administration Assistant".

4.31 5 No. photographs are attached to the email and show demolition at Rookwood (before and after).

(vi) Letter from Mid Sussex District Council Building Control to Best Demolition Limited, dated 28th October 2022. Ref: DS/22/0032

4.32 A letter from Mid Sussex District Council Building Control to Best Demolition Limited, dated 28th October 2022. Ref: DS/22/0032.

4.33 The letter is written in relation to the Building Act 1984 (Section 81) and read as follows:-

"Location: Rookwood Tylers Green Cuckfield Haywards Heath West Sussex

Description: Demolition of property

Reference: DS/22/0032

Mid Sussex District Council (hereinafter called "the Council"), are satisfied that demolition works are intended at the above address. Therefore, this Counter Notice is hereby given in accordance with Section 81(1)© of the Building Act.

The Council pursuant to Section 81 of the Building Act 1984 hereby require you to take action in accordance with the schedule given overleaf, which is associated with the intended demolition of the stated premises.

If you consider yourself aggrieved by any of these terms of conditions, you have the right to appeal to a Magistrates Court within 21 days from the date of receipt of this Notice of Consent. Further details are provided under the "Right of appeal" heading".

4.34 in conclusion, it is our opinion that the above works comprise lawful implementation as they:

- relate to and is authorised by the Planning Permission i.e they are 'comprised in the development' within the meaning of s56(2) of the Act (the description of the planning permission includes demolition of the building);
- fall within a category specifically described within the section 56(4) of the Act; and
- involve building operations which are more than de minimis.

The works are therefore sufficient to implement the development within the meaning of section 56 of the Act.

5.0 SUMMARY

- 5.1 A Lawful Development Certificate is sought to demonstrate that a lawful start has been made in implementing planning permission **DM/20/2661** for *'demolition of existing building comprising building (comprising 2 x existing dwellings, following approval of lawful development certificate DM/21/1367) and garage, and replacement with 2 x 4 bed detached dwellings with garaging'* at Rockwood, Tylers Green, Cuckfield, Haywards Heath, West Sussex, RH17 5DZ.
- 5.2 All pre-commencement conditions (those numbered 3, 4 and 5) have been formally discharged as set out in detail above. The original planning permission (**DM/20/2661**) for the development of the Site does not include any other conditions or formal requirements that are subject to pre-commencement discharge.
- 5.3 In terms of the on-site works that have occurred since planning permission was granted in September 2021, the site has been cleared with the original buildings demolished and removed from the site. These demolition works were started on 8th November 2022.
- 5.4 Given that demolition is included within the description detailed on the Decision Notice it is our view that demolition of the existing buildings on the site is sufficient to amount to implementation (and therefore suffice to save the permission). This is because Section 56(1) of the Town & Country Planning Act 1990 confirms that development starts when a material operation is begun and *"material operation"* includes *"demolition"* (Section 56(4) refers).
- 5.5 It is clear that works have commenced via the demolition of the existing buildings and all pre-commencement conditions were discharged prior to the permission lapsing on 29th September 2024. The demolition works constitute a material operation in planning terms, and therefore a lawful commencement of application

DM/20/2661 (with associated discharge of conditions applications **DM/24/1815** and **DM/24/2026**) has occurred. Consequently, our position is that the remaining development approved under this reference can be lawfully carried out.

- 5.6 Further, Informal decisions have been held with the Council regarding the above. An Email from Katherine Williams, Senior Planning Officer at Mid Sussex District Council to Mr. Tim Rodway (Planning Agent), dated 23rd September 2024 stated that *"having considered the attached information it is my informal opinion that a lawful start has been made and this permission is extant. If you require a formal decision from the Council this would require the submission of an Existing Lawful Development Certificate..."*
- 5.7 The standard of proof required on the part of the Applicant is no more than the *"balance of probability"*. The Authority would have no excuse for refusing a CLEUD because the applicant failed to discharge the stricter, criminal burden of proof (*"beyond reasonable doubt"*). In FW Gabbitas v SSE (1985) J.P.L 630 the High Court held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.
- 5.8 The evidence submitted in support of this statement demonstrates beyond any reasonable doubt (less still on the balance of probabilities) that the Planning Consent was lawfully implemented before the expiry date of 29th September 2024. As set out within this Statement, the lawful implementation has also been informally confirmed by Mid Sussex Council Planning Officers in their email dated 23rd September 2024. This application has therefore been submitted to formalise this in the form of a Certificate of Lawfulness.
- 5.9 This Consent is therefore extant such that the development authorised may lawfully be carried on and completed at any time in the future.

- 5.10 Taking into consideration the legal tests by which a CLEUD application should be considered, we believe that we have adequately shown, on the balance of probabilities, that the necessary works were carried out prior to the permission lapsing on 29th September 2024.

December 2024