

STATEMENT OF CASE

***‘To confirm that a Lawful Commencement
of Planning Permission reference
DM/22/1616 has occurred’***

**Land east of Hurst Wickham Barn,
College Lane, Hurstpierpoint (‘the Site’)**

July 2025

1.0 INTRODUCTION

- 1.1 We are instructed on behalf of our client, Mr. Oliver Atkinson and Ms. Louisa Teather, to submit to Mid Sussex District Council (MSDC) a Lawful Development Certificate to establish that an approved development has been lawfully commenced on land east of Hurst Wickham Barn, College Lane, Hurstpierpoint.
- 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/22/1616** for *'erection of 1 no. detached, two storey dwelling house with timber framed detached, two storey garage, including new access and entrance gates (amendments to implemented planning permission DM/17/0948 [as extended by DM/20/3713])'*, relating to land east of Hurst Wickham Barn, College Lane, Hurstpierpoint.
- 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/22/1616** 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 works commencing on site, the site comprised an existing field/paddock, which is located at the edge of the settlement of Hurstpierpoint.
- 2.2 'Hurst Wickham Barn' is located to the west, with other neighbouring properties being 'Four Winds' to the north and 'Hurst Wickham Rise' to the north and east. The southern boundary leads onto further open fields.
- 2.3 In terms of the site's planning designations, the site is located outside of any built-up area boundary, within designated countryside. The built-up area boundaries adjoin the site to the north (around 'Four Winds') and west (across College Road). Furthermore, the site borders the Hurst Wickham Conservation Area to the west.

3.0 PLANNING HISTORY

- 3.1 This Lawful Development Certificate relates to the following planning application:-
- **Planning ref: DM/22/1616/:** Erection of 1 no. detached, two storey dwelling house with timber framed detached, two storey garage, including new access and entrance gates (amendments to implemented planning permission DM/17/0948 (as extended by DM/20/3713). Approved Conditionally 2nd August 2022.
- 3.2 The current owners subsequently submitted the following planning applications:-
Current Owners Planning Permission
- **Planning ref: DM/25/0572/:** Discharge of planning conditions 3, 4, 5, 6, 7, 8 and 10 in relation to planning application DM/22/1616. Approved 24th April 2025.
 - **Planning ref: DM/25/0924/:** Discharge of planning condition no. 9 relating to planning application DM/22/1616. Pending Consideration.
- 3.3 The former Owner submitted the following planning applications for consideration:-
Former Owners Planning Permission
- **Planning ref: DM/17/0948/:** Change of use from agricultural to residential, for erection of a three storey new build house on the field east of Hust Wickham Barn, with access from a new driveway off College Lane. Approved 15th May 2017.
 - **Planning ref: DM/20/1100/:** Discharge of conditions 2, 3, 7, 13, 14 and 15 relating to planning reference DM/17/0948. 15th May 2020.
 - **Planning ref: DM/20/1187/:** Discharge of conditions 5, 7 and 9 relating to DM/17/0948. Approved 12th May 2020.
 - **Planning ref: DM/20/3713/:** Additional Environmental Approval relating to DM/17/0948. 5th November 2020.



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- **Planning ref: DM/21/0994/:** Details approved for access to allow for the implementation of planning permission DM/17/0948 as extended by DM/20/3713 have begun. Approved 30th April 2021.



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 2nd August 2025) (condition 2).

4.8 There were 7 pre-commencement conditions, which were discharged as follows:

- **Condition 3** – The details regarding the materials and finish of the buildings received on 6th March, 10th March (regarding brickwork, roof tiles and membrane, fenestration and rainwater goods) and 7th April 2025 (regarding sandstone) confirmed as discharged via approval **DM/25/0572**, dated 24th April 2025.

- **Condition 4** – The sample brickwork panel prepared on site confirmed as discharged via approval **DM/25/0572**, dated 24th April 2025.
- **Condition 5** – The details and plans regarding the windows, including the roof lantern, received on 7th April 2025 confirmed as discharged via approval **DM/25/0572**, dated 24th April 2025.
- **Condition 6** – The details and plans regarding the doors, including the garage doors, received on 7th April 2025 confirmed as discharged via approval **DM/25/0572**, dated 24th April 2025.
- **Condition 7** – The details and plans regarding the eaves and parapet, including cornicing, received on 7th April 2025 confirmed as discharged via approval **DM/25/0572**, dated 24th April 2025.
- **Condition 8** – The details and plans regarding the front and side porch/porticos, received on 7th April 2025 confirmed as discharged via approval **DM/25/0572**, dated 24th April 2025.
- **Condition 10** – The details regarding Construction Management Plan and site set-up plan received on 6th March and 7th April 2025 confirmed as discharged via approval **DM/25/0572**, dated 24th April 2025.

4.9 A formal application to discharge the one remaining **Condition 9** was submitted and formally validated on 3rd April 2025. This Discharge of Conditions application remains outstanding at the time of writing, following requests for further information from the Council's Drainage Engineers. However, the requested information has been submitted and we are confident that Condition 9 will be imminently confirmed as discharged also. The details are as follows:-

- **Planning ref: DM/25/0924/:** Discharge of planning condition no. 9 relating to planning application DM/22/1616. Pending Consideration.

4.10 **Therefore it is clear that works have commenced via all pre-commencement conditions being submitted and discharged prior to the permission lapsing on 2nd August 2025. The exception of this is condition 9 (drainage), which was**

submitted on 3rd April and is imminently awaiting a decision. Consequently, our position is that the remaining development approved under this reference can be lawfully carried out.

Evidence

(i) Letter from the landowners, signed and dated 10th July 2025.

- 4.11 The Lawful Development Certificate is supported by a letter, which has been signed and dated 10th July 2025 by Mr. Oliver Atkinson.
- 4.12 Mr. Atkinson confirms that he and Louisa Teather purchased the site on 17th September 2021 from Baobab Developments who had previously obtained planning permission for a single 3-storey dwelling (MSDC references DM/17/0948 and DM/20/3713). Prior to purchasing the Site, the Local Planning Authority had confirmed that the above planning permission had been lawfully commenced by virtue of on-site works. Please refer to Lawful Development Certificate DM/21/0994.
- 4.13 As landowners of the above Site, Mr. Atkinson confirms the following:

"In February 2021 we engaged with the Local Planning Authority via a pre-application planning enquiry for a revised design for the new dwelling to be erected on the Site. On the basis of the positive comments received from the Planning Officer and Conservation Officer, we submitted a detailed planning application for a new dwelling with a revised design in May 2022 (MSDC ref: DM/22/1616). This application was granted planning permission by MSDC on 2nd August 2022.

The Planning Permission is required to be implemented 3 years from the date of the Decision Notice being issued, which is the 2nd August 2025.

We have recently submitted applications for the formal discharge of the pre-commencement planning conditions (MSDC ref: DM/25/0572). Planning Conditions

numbered 3, 4, 5, 6, 7, 8 and 10 pursuant to planning permission DM/22/1616 have been formally confirmed as discharged, via decision notice dated 24th April 2025.

A separate application for the Discharge of Planning Condition no.9 (MSDC ref: DM/25/0924) was submitted on 3rd April 2025. This Discharge of Conditions application remains outstanding at the time of writing, following requests for further information from the Council's Drainage Engineers. However, the requested information has been submitted and the planning officer dealing with this case, Katherine Williams, is confident that Condition 9 will be imminently discharged.

In the meantime, we instructed Mayoss and Co. Builders Ltd. to undertake extensive works on-site comprising excavating and laying the driveway and laying ducting for services, water and gas mains pipes and foul sewerage. These works were undertaken between 2nd June 2025 and 17th June 2025 and are as per the pre-agreed works detailed as part of the preapplication submitted to Katherine Williams (MSDC ref: DM/25/0354). Attached is an invoice from Mayoss & Co. which confirms the works that were undertaken and the dates these works took place. We can confirm that all works were commenced and completed within the timeframe for implementation of the development.

Also attached are dated photographs of the works taking place. These works are significant and material, and accord with the details approved by MSDC under planning permission DM/22/1616, and as agreed as part of the preapplication submitted to Katherine Williams (MSDC ref: DM/25/0354). Subsequently, on 4th July 2025 we received an email from Katherine Williams, which confirmed that "I have been to the site and can confirm that the works on site appear to be sufficient to be considered a start to the last permission." On this basis it is clear that the development approved by planning permission DM/22/1616 has been lawfully commenced".

(ii) invoice from Mayoss & Co. Builders Ltd

- 4.14 An invoice from Mayoss & Co. Builders Ltd to Mr. Oliver Atkinson c/o Hurst Wickham Barn, College Lane, Hurstpierpoint.
- 4.15 The invoice is Numbered 1231m and dated 17th June 2025.
- 4.16 It relates to their extensive on-site works having been undertaken, comprising excavating and laying the driveway and laying ducting for services, water and gas mains pipes and foul sewerage. They confirm that these works were carried out between 2nd and 17th June 2025 at the site in question.

(iii) Photographs

- 4.17 A selection of 9 no. photographs of works being undertaken at the site in question. The photographs are dated between 4th and 19th June.

(iv) Email Correspondence between the Case Officer and Mr. Atkinson

- 4.18 Email from Katherine Williams, Senior Planning Officer to Mr. Oliver Atkinson dated 26th March 2025.
- 4.19 The email confirms the following:-
"In order for a lawful start to be made on site all pre-commencement conditions must be discharged and a 'material operation' carried out on site within the 3 year time limit, which is 2nd August 2025.

A discharge of conditions application is currently under consideration for conditions 3-8 and 10. Subject to the approval of this application this will leave condition 9 to be discharged prior to works on site.

A 'material operation' is defined under Section 56(2) of the Town and Country Planning Act 1990 as:

- '(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.'*

The construction of part of the driveway could be considered to constitute a start as this falls under (d) of the definition of a 'material operation'. It is however noted that this stretch of driveway has a similar position to the driveway approved under the previous scheme DM/17/0948, therefore any Lawful Development Certificate submitted would need to demonstrate that the works undertaken relate to DM/22/1616 and not the existing extant permission on the site. This could be done by identifying the differing surface materials or exact positions of the driveways between the permissions. Alternatively, the portion of the driveway constructed could be extended further into the site due to the different directions the driveways take in the permissions, which would clearly then show that the works undertaken relate solely to the subsequent permission".

- 4.20 A subsequent email from Katherine Williams, Senior Planning Officer to Mr. Atkinson, dated 4th July 2025. This email states:-

“Following our conversation the other week I have been to the site and can confirm that the works on site appear to be sufficient to be considered a start to the last permission.

The email from Martin Roberts has been sent to the Flood Risk and Drainage Team and I am awaiting their response”.

Conclusion

4.21 In conclusion, it is our opinion that the works undertaken during the month of June 2025 at the site comprise lawful implementation of planning permission DM/22/1616, as these works:

- 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/22/1616** for *'erection of 1 no. detached, two storey dwelling house with timber framed detached, two storey garage, including new access and entrance gates (amendments to implemented planning permission DM/17/0948 [as extended by DM/20/3713])'*, relating to land east of Hurst Wickham Barn, College Lane, Hurstpierpoint.
- 5.2 Pre-commencement conditions (3, 4, 5, 6, 7, 8, 10) have been formally discharged as set out above. A formal application to discharge the one remaining pre-commencement condition 9 was submitted and formally validated on 3rd April 2025. A decision on this application is expected to be issued imminently. The original planning permission (**DM/22/1616**) 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 August 2022, As detailed within their letter statement, our clients confirm that they *"instructed Mayoss and Co. Builders Ltd. to undertake extensive works on-site comprising excavating and laying the driveway and laying ducting for services, water and gas mains pipes and foul sewerage. These works were undertaken between 2nd June 2025 and 17th June 2025 and are as per the works that were pre-agreed as part of the preapplication submitted to Katherine Williams (MSDC ref: DM/25/0354). Attached is an invoice from Mayoss & Co. which confirms the works that they have undertaken and the dates these works took place.*

We can confirm that all works were commenced and completed within the timeframe for implementation of the development.

Also attached are dated photographs of the works taking place. These works are significant and material, and accord with the details approved by MSDC under

planning permission DM/22/1616, and as pre agreed as part of the preapplication submitted to Katherine Williams (MSDC ref: DM/25/0354) . Subsequently, on 4th July 2025 we received an email from Katherine Williams, which confirmed that "I have been to the site and can confirm that the works on site appear to be sufficient to be considered a start to the last permission." On this basis it is clear that the development approved by planning permission DM/22/1616 has been lawfully commenced".

- 5.4 It is clear that works have commenced with the discharge of all pre-commencement conditions prior to the permission lapsing on 2nd August 2025 (with the exception of condition 9 which is expected imminently). Works have also been carried out on site as detailed on the attached photographs and detailed invoice from Mayoss & Co. Builders Ltd. Consequently, our position is that the remaining development approved under reference DM/22/1616 can be lawfully carried out.
- 5.5 Further, informal discussions have been held with the Council regarding the above. An Email from Katherine Williams, Senior Planning Officer at Mid Sussex District Council to Mr. Atkinson (Planning Applicant), dated 4th July 2025 stated that *"following our conversation the other week I have been to the site and can confirm that the works on site appear to be sufficient to be considered a start to the last permission..."*.
- 5.6 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 Gabbittas 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.

- 5.7 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 2nd August 2025. As set out within this Statement, the lawful implementation has also been informally confirmed by Mid Sussex Council Planning Officers in their email dated 4th July 2025. This application has therefore been submitted to formalise this in the form of a Certificate of Lawfulness.
- 5.8 This Consent is therefore extant such that the development authorised may lawfully be carried on and completed at any time in the future.
- 5.9 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 2nd August 2025.

July 2025