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Neath Port Talbot Council
Planning
The Quays
Brunel Way
Neath
SA11 2GG

Ref: L003.6183CA

Date: 14th February 2025

Dear Sir/Madam

APPLICATION FOR LAWFUL DEVELOPMENT CERTIFICATE FOR AN EXISTING USE AT WAUN STERW, RHYD Y FRO, PONTARDAWE FOLLOWING IMPLEMENTATION OF PLANNING PERMISSION REF: P2019/5543

On behalf of Yr Hadau Ltd, we hereby submit an application under Section 191(1) of the Town and Country Planning Act (TCPA) 1990 as amended by Section 10 of the Planning and Compensation Act 1991; Town and Country Planning (Development Management Procedure)(Wales) Order 2012, for a Lawful Development Certificate for an Existing Use or Operation of Activity, which seeks confirmation from Neath Port Talbot Council that the development implemented at Waun Sterw, Rhyd y Fro, Pontardawe in accordance with planning permission reference: P2019/5543, is lawful.

In accordance with the requirements of Section 28 of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012, enclosed is a plan identifying the land to which the application relates drawn to an identified scale and showing the direction north. Set out in this letter and attached to it is evidence verifying the information included in the application. Finally, we can confirm that the applicant, Yr Hadau Ltd, is the sole owner of the land on which the application relates.

Background

Full planning permission was granted on 3rd March 2020 under application ref. P2019/5543 for the “proposed development of 35 zero carbon homes plus community building along with associated works including landscaping, parking, access, engineering works and ecological mitigation” at Waun Sterw, Rhyd y Fro, Pontardawe.

Condition 1 of the permission stipulates that the development shall begin no later than five years from the date of the decision, therefore by 3rd March 2025. As works to implement the consent have recently been completed, this application is seeking confirmation that a material operation has taken place and that the works are lawful, meaning that the consent has been implemented.

Legislative Context**Section 191 of the TCPA**

The statutory framework for lawful development certificates is set out in Sections 191-193 of the Town and Country Planning Act 1990: Section 191 as amended by section 10 of the Planning and Compensation Act 1991. Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

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Section 191(1) allows local planning authorities to grant a lawful development certificate for an existing use or development *if a 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* (our emphasis); 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,*

Following the grant of a certificate under S.191, the lawfulness of any use, operations or other matter for which a certificate is in force under S.191 shall be conclusively presumed.

Section 56 of the TCPA

Section 56 of the TCPA relates to the implementation of developments. Section 56(1) sets out that development of land shall be taken to be initiated:

“if the development consists of the carrying out of operations, at the time when those operations are begun;”.

Section 56(2) sets out that development shall be taken to be begin on the earliest date on which any material operation comprised in the development begins to be carried out.

The definition of ‘material operation’ is defined under Section 56(4) 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* (our emphasis);
- (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.*

To be ‘material’, an operation must be more than *de minimis*. As evidenced within this submission, the works include a completed foundation and dressing for House 1. This was proceeded by enabling access and groundwork in areas assessed and overseen by an ecologist giving a safe working area, and the excavation required at the beginning of the western terrace of homes. The works undertaken therefore, fall within those outlined in the Act as constituting a material operation.

Evidence

Evidence is enclosed with this application which demonstrates that the development as approved under P2019/5543 has been implemented in line with the approved plans and the relevant conditions and therefore represents a lawful commencement. Should a site visit to inspect the works be necessary, we can arrange for this to take place.

Discharge of Pre-Commencement Conditions

All pre-commencement conditions requiring discharge have been complied with. These are as follows:

- Condition 4 (Construction Method Statement) – discharged under P2020/0665 on 22nd September 2020.
- Condition 5 (Landscaping Scheme) – discharged under P2021/0875 on 18th November 2021.
- Condition 6 (Construction Environmental Management) – discharged under P2020/0665 on 22nd September 2020.
- Condition 7 (Habitat Management Plan) – discharged under P2020/0665 on 22nd September 2020.

Decision notices for the above conditions are enclosed with this submission.

In addition, Condition 3 attached to the planning permission (ref. P2019/5543) requiring the notification of implementation of works, was submitted to the local planning authority on 28th January 2025 and the notice displayed at site. A copy of the notices is enclosed with this submission together with a photograph of the site notice in place.

Compliance with S106 Legal Agreement

All pre-commencement requirements associated with the Section 106 Legal Agreement attached to the planning consent have also been complied with. These are as follows:

- Submission and approval of the Habitat Management Plan; and
- Payment of the Ecological Mitigation Contribution (£27,795) made to NPTC on 19th November 2021.

Works Undertaken to Implement the Consent

On 29th January 2025, Hale Construction commenced works on Plot 1. The enclosed photographs illustrate the works being undertaken.

Enclosed is a Site Commencement Plan prepared by Hale Construction which sets out the work which was undertaken to commence development. This confirms that the concrete foundations to Plot 1 were excavated and lined with concrete strip footings. These foundations were constructed in accordance with the approved plans as specified under Condition 2 of the permission.

On 12th February 2025, Hale Construction completed the works to Plot 1. The enclosed photographs illustrate the completed works, with the foundations to Plot 1 in place.

Additional Works Undertaken

Enclosed is a method statement by Hale Construction which outlines the works undertaken. In addition to the construction of the foundation to Plot 1, works to aid water runoff control at the low point of the site were also undertaken. This comprised the lining of the existing ditch with hay bales which are staked to the ground together with silt fencing. These additional works can be seen in the enclosed photographs taken during the works being undertaken.

Prior to works commencing, a site walkover was undertaken by Eric Hawkeswood, Principal Ecologist at Hawkeswood Ecology. Enclosed is a letter prepared following this walkover, dated 21st January confirming that the area on which work was to commence consists of a high frequency of bare ground, much of which is saturated with water. As such, the conclusion is reached that the area would not be used by reptiles for brumation. The letter confirms that works to clear the area will be undertaken under the supervision of an experienced ecologist. Furthermore, the letter confirms that beyond the works to Plot 1, a visual inspection of the site will be undertaken to ensure no reptiles are present. Finally, in accordance with the measures set out in the Habitat Management Plan, prior to works commencing, the reptile fencing at the site has been reviewed and made good.

Submitted Evidence

As set out above, the following information is submitted as evidence that planning permission reference: P2019/5543 has been lawfully implemented:

1. Site Location Plan identifying the land to which the application relates;
2. Decision Notice for Planning Consent reference: P2019/5543;
3. Decision Notice for Condition 4 (Construction Method Statement) – discharged under P2020/0665 on 22nd September 2020;
4. Decision Notice for Condition 5 (Landscaping Scheme) – discharged under P2021/0875 on 18th November 2021;
5. Decision Notice for Condition 6 (Construction Environmental Management) – discharged under P2020/0665 on 22nd September 2020;

6. Decision Notice Condition 7 (Habitat Management Plan) – discharged under P2020/0665 on 22nd September 2020.
7. Letter from Hawkeswood Ecology confirming acceptability of site for works to commence;
8. Notice of Commencement of Works issued to Neath Port Talbot Council on email on 28th January in accordance with Condition 3 attached to Planning Consent reference: P2019/5543;
9. Site Notice Erected on site in accordance with Condition 3 attached to Planning Consent reference: P2019/5543;
10. Photograph of Site Notice erected on site;
11. Site Commencement Plan prepared by Hale Construction;
12. Method Statement prepared by Hale Construction;
13. Photographs of Works Being Undertaken; and
14. Photographs of the Completed Works.

Conclusion

The evidence submitted in support of this application is both precise and unambiguous and therefore passes the test under Section 56 of the TCPA, demonstrating that the works have been lawfully implemented in accordance with planning consent P2019/5543.

On this basis, having regard to Section 191 of the TCPA, the development carried out at Waun Sterw, Rhyd y Fro, Pontardawe, to which this letter relates to, has assumed lawful status. This should therefore be confirmed by the granting of this lawful development certificate.

Given that planning consent reference: P2019/5543 lapses on 3rd March 2025, the applicant requests that this application is considered with the utmost priority in order that that delivery of 35 zero carbon homes can continue, assisting in meeting the housing needs of the area.

We look forward to receiving a positive determination, though should you have any questions or require any further information, please do not hesitate to contact me.

Kind regards.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Gareth Hooper', written in a cursive style.

Gareth Hooper
Chief Executive Officer

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