



Head of Planning and Development
Planning Department
Reading Borough Council
Civic Offices
Bridge Street
Reading
RG1 2LU

3rd October 2024

Ref. SP24-1060

Dear Sirs,

Town and Country Planning Act 1990 – Section 73
Great Brighams Mead, Vastern Road, Reading, RG1 8DJ
Variation of Condition No.1 (Time Limits – Completion) of Planning Application Ref. 210567

Simply Planning Limited (SPL) is instructed by our client, Kings Oak Miami LLP (In Administration), to submit the enclosed application made under Section 73 of the Town and Country Planning Act (1990), to vary condition no. 1 (Time Limits) of planning permission ref. 210567, and in doing so amend the date of completion.

By way of background, prior approval (ref. 210567) was awarded by the Local Planning Authority for the following:

“Change of use from office use Class B1(a) to Use Class C3 to comprise 110 residential units.”

That permission, which is dated 1st June 2021, was subject to a total of 8no. planning conditions. Condition No.1 states:

“This development under Class O is permitted subject to it being completed within a period of 3 years starting with the prior approval date on this decision notice”

The reason given for Condition No. 1 is to ensure that the development can comply with the requirement of paragraph O.2 (2) of the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016.

Accordingly, the development is required to be completed by 1st June 2024.

Site and Surroundings

The application site comprises a three-storey former Office building known as Great Brighams Mead with a part brick façade, a hipped roof and a distinctive clocktower located in a prominent position facing the public realm.

The site is located to the north of Reading Train Station, fronting onto the Caversham Road/Vastern Road roundabout. It is on the edge of a residential area which comprises predominately terraced Victorian houses and flats to the rear.

In terms of main planning constraints, the site is located within Flood Zone 3. The River Thames is located directly to the rear of the site.

The site is not statutory or locally listed, and there are no listed buildings or scheduled monuments located within the immediate vicinity.

The site lies outside, but on the edge, of the Central Core Policy Area and the Office Core Policy Area (Reading Borough Local Plan).

A Site Location Plan accompanies this application (**Document 1**).

Planning History

The pertinent planning history, affecting the application site, is summarised in the table below:

Reading Borough Council. Planning Application Ref.	Description of Development	Decision/Date
210567	Change of use from office use Class B1(a) to use Class C3 to comprise 110 residential units. Prior Notification under Class O, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.	Approved 1 June 2021
220717	External alterations in connection with conversion to residential use, including replacement of main revolving doors with double swing doors, new glazing to lobby, creation of side and rear door openings, new window openings and replacement windows.	Approved 4 August 2022
221479	Application for prior approval of 72 proposed new dwellinghouses on detached buildings in commercial or mixed use - Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 20, Class AA, for the proposed additional storeys to result in a third and fourth floor.	Refused 21 November 2022
220778	Application for prior approval of 72 proposed new dwellinghouses on detached buildings in commercial or mixed use - Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 20, Class AA, for the proposed additional storeys to result in a maximum overall building height of 21.92m.	Refused 4 August 2022
230745	Construction of a two-storey roof (third and fourth floor) extension to accommodate 100 apart-hotel rooms (Use Class C1) with associated parking, cycle stores and bin stores.	Refused 13 August 2024

The main planning application is that of RBC Ref. 210567. This permission allowed for the change of use of the building from office use Class B1(a) to use class C3 and permitted a total of 110 residential units. A copy of the Prior Approval Decision Notice has been included with this submission at **Document 2**.

The permission is subject to a total of 8no. planning conditions. These are summarised in the table below:

Condition	Nature	Type	SPL Commentary	Status
1.	Time Limit	Controlling	Requires development to be "completed" within a 3-year period of the decision (i.e. by 1 st June 2024).	Completion time frame has expired – hence the requirement to submit this s73 application.

Condition	Nature	Type	SPL Commentary	Status
2.	Approved Plans	Controlling	Condition outlines the approved plans that the development should be carried out in accordance with.	N/A
3.	Contamination	Pre-Commencement	Condition requires an assessment of contamination risks to be submitted and approved by the Local Planning Authority, prior to any works (including demolition and preparatory) occurring on site.	Condition discharged 13 th May 2022 (RBC Ref. 220343).
4.	Remediation Scheme	Pre-Commencement	Prevents any development (including demolition and any preparatory works) until a detailed contamination remediation scheme has been submitted and approved by the LPA.	Condition discharged 13 th May 2022 (RBC Ref. 220343).
5.	Remediation/Verification Report	Pre-Foundation Works	Condition requires the approved remediation scheme to be implemented in accordance with an approved timetable of works. A validation report (demonstrating effectiveness of the remediation) should also be submitted to and approved by the Local Planning Authority.	Condition discharged 13 th May 2022 (RBC Ref. 220343).
6.	Unexpected Contamination	Controlling	Requires development to cease in the event of finding unexpected contamination. The nature of any contamination found should be reported, in writing, to the LPA and (if necessary) a further remediation strategy prepared.	N/A
7.	Flood Risk	Pre-Occupation	Prior to first occupation condition requiring all flood mitigation and protection measures outlined within the Flood Risk Assessment, prepared by Stantec, to be implemented in full and maintained in perpetuity.	N/A
8.	Flood Management and Mitigation Plan	Pre-Occupation	Requires submission of a site-specific Flood Management and Evacuation Plan (FMEP) – including a continuous safe access route and means to ensure that residents are provided with sufficient advance warning to evacuate the site.	Condition discharged 10 th October 2023 (RBC Ref. 230698).

As the above table shows, all pre-commencement conditions, pursuant to the prior approval, have previously been discharged. Accordingly, a lawful commencement of the development could occur. Upon doing so, Condition No. 1, as drafted then required the development to be completed within a period of 3 years (i.e. by 1st June 2024).

Issue at Hand

Following the successful discharge of several pre-commencement planning conditions, the main contractor was appointed (possession of site 3rd May 2022). A lawful commencement of the development occurred in May 2022. The contract anticipated an original completion date for the works of 2nd May 2023, well in advance of the of 1st June 2024 backstop date.

Construction activities continued to progress well on site up until the main contractor fell into financial difficulties. Unfortunately, this is not an uncommon issue in the construction sector at present. A replacement contractor was appointed in April 2023. The new contractor anticipated completion by January 2024.

However, following appointment of the second contractor, an environmental survey resulted in the discovery of bats in the roof space. Following a lengthy application period, a bat license was issued by Natural England in March 2024 allowing construction activities to continue.

Regrettably, during this period the replacement contractor was unable to continue, having also fallen into financial difficulties. A further main contractor was then appointed to the project. On 3rd May 2024, an HSE Inspector issued a prohibition notice against the main contractor. The construction difficulties facing the Developer resulted in the terms of their financing being breached. Accordingly, on 29th May 2024 Arron Kendall and Michael Solomons, both of Moorfields Advisory, were appointed as administrators of Kings Oak Miami LLP.

The immediate priority of the administrator has been to make safe the previous construction works, which was achieved over the Summer. In parallel, the administrator appointed a new professional team to remobilise the site, with the intention of completing the works to the requisite standard.

The office tenant vacated the building in March 2022, and it is reasonable to conclude that office use ceased on completion of all-strip out works in September 2022. As at now, the current works correlate to what would ordinarily be expected at first and second fix stage. Partition walls have been installed, the residential apartments laid out and in several apartments the bathrooms have been fitted and tiled.

The nature of works/construction activity on site demonstrates a clear commitment to bring forward a residential conversion, following the earlier approval. Accordingly, having regard to the above, it is not possible for the conversion of the entire building to have been completed by 1st June 2024.

The client is, therefore, unable to satisfy the requirements of Condition No. 1, as drafted, which could stifle the development of this site. Considering this, we would respectfully request that the condition be reworded as follows:

"This development under Class O is permitted subject to it being completed within a period of 6 years starting with the prior approval date on this decision notice."

This will enable our client with sufficient time for the entire building to be completed. It is, we suggest, wholly reasonable for a conversion scheme of this scale and complexity particularly in the context of the site-specific planning and construction history.

Legislative Context and Appropriate Mechanism

Section 73 of the Town and Country Planning Act (1990) relates to the '*Determination of applications to develop land without compliance with conditions previously attached*'.

At sub paragraph (5) S73 states:

“Planning permission must not be granted under this section for the development of land in England to the extent that it has an effect to change a condition subject to which a previous planning permission was granted by extending the time within which –

(a) A development must be started;

(b) An application for approval of reserved matters (within the meaning of Section 92) must be made”.

This is consistent with the advice that is set out within the National Planning Practice Guidance (NPPG) which confirms that:

“Planning permission cannot be granted under Section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made” (014 Ref ID:17a-014-20140306).”

Notably, there is no such restriction on varying a condition to extend the time limit in which a development must be ‘completed’.

In support of this submission, a legal opinion has been sought from Counsel (**Document 3**) with regard to the suitability of the S73 mechanism of the Town and Country Planning Act 1990 (“TCPA”) to approvals awarded pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596) (“the GPDO”).

This advice confirms that Section 73 TCPA can be used to vary conditions as imposed by a General Development Order (such as the GPDO). Reference is afforded to *“Pressland v. London Borough of Hammersmith and Fulham [2016] [EWHC 1763 (Admin)”* which was an application concerning the application of a S73 TCPA to a Class O prior approval. The High Court ruled that S73 TCPA was not limited to express grants of permission by planning authorities, but was equally applicable to conditions imposed on grants of prior approval:

“For the reasons given an application may be made under section 73 of the 1990 Act for the development of land without complying with conditions subject to which a previous planning permission was granted by a development order. Those conditions include those subject to which any prior approval required under the development order was granted.”

Accordingly, there is, as per the Pressland Case, no bar to an applicant using S73 TCPA to vary conditions imposed by the GPDO.

Put simply, an application to extend the time by which completion is required does not contravene the limitation as imposed by S73 (5) TCPA. This is because the limitation at S73 (5) TCPA applies to extending the time for commencing a development rather than extending the time for completion of development. They are wholly different and an application to extend time for completion is not caught by s73 (5) TCPA.

Section 73 is, therefore, the correct mechanism for varying the time limit restriction to enable the completion of the conversion works.

Conclusions

This application simply seeks to extend the ‘backstop’ date for the entire building to be completed and provide our client with sufficient time to deliver much needed new homes within the Borough following construction challenges



faced on the site.

The application does not propose any material amendments to the scheme that would necessitate reconsideration.

Owing to the complexity of the site-specific planning history, alongside the scale of the development, we consider that an extension of 3 additional years from the date of approval of the original S73 is wholly acceptable and reasonable in this instance.

We trust that based on the information submitted, the application can be duly registered, and we look forward to discussing the proposal with your officers in more detail in due course. If, however, you require any further information, please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Alastair Thornton', is written over a light blue horizontal line.

Alastair Thornton

Director

Encs.