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Mr Stephen Cantwell
Worthing and Adur Planning Department
Portland House
44 Richmond Road
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BN11 1HS

01 August 2025
Ref: MS/Let/P1702iv

Dear Mr Cantwell,

Application for Certificate of Lawfulness (Existing) under Section 191 of the Town and Country Planning Act 1990 (as amended) – Confirmation of Commencement of Planning Permission AWDM/0083/24 at Land at Former Gasworks Site, Park Road, Worthing, West Sussex

ECE Planning are writing on behalf of **Berkeley Homes (Southern) Limited**, to formally submit an application for a Certificate of Lawfulness to confirm that the planning permission granted under reference **AWDM/0083/24 (the "S.73 Permission")** has been lawfully commenced and implemented in accordance with Section 56 of the Town and Country Planning Act 1990 (as amended).

Planning Background

In October 2022, planning permission was granted under reference **AWDM/1459/21** at the Former Gasworks Site, Worthing for:

> *"the Demolition of Existing Structures, Partial Removal of Boundary walls and the construction of 209 residential apartments spread across 5 blocks ranging in height from 3-7 storeys, associated access, parking, open space and landscaping"* (the "**Original Permission**")

Following an S96a NMA approval to amend the description of development under **AWDM/1446/23**, the S. 73 Permission (**AWDM/0083/24**) was granted on 11 June 2024 for development at the Former Gasworks Site. The description of development reads:

> *Original Description AWDM/1459/21 (As amended by AWDM/1446/23):*
>
> *Full Planning Application for the Demolition of Existing Structures, Partial Removal of Boundary Walls and Construction of a Residential Development spread across 5 Blocks with associates Access, Parking, Open Space and Landscaping.*
>
> *Application to Vary Conditions including:*
>
> *Condition 1 (Approved Plans); Conditions 17 & 20 (Foul & Surface Water Drainage);*
>
> *Condition 21 (Energy Strategy); Condition 22 (Landscape); Condition 25 (Balcony Screens); And Conditions 31 & 33 (Noise).*

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The changes include an additional (Eighth) Storey to Block B but broadly within the Approved Massing Envelope and including a reduction of Building Heights, accommodating an additional 19 dwellings.

Condition 2 of the S.73 Permission required that the development be commenced by 4th October 2025, to adhere with the time limit of the Original Permission.

This application for a lawful development certificate seeks to demonstrate that the development has lawfully commenced prior to the expiration of the S.73 Permission and that this commencement constituted a material operation sufficient to lawfully implement the S.73 Permission.

Legal Context

Section 56(2) of the Town and Country Planning Act (1990) states that:

'development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.'

Section 56(4) of the Town and Country Planning Act 1990, defines 'material operations' 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 to any such trench as is mentioned above;*
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.*

Accordingly, if any of the above actions have been lawfully undertaken on site and are demonstrably associated with the approved development under the S.73 Permission, it can be agreed that development has lawfully commenced.

Evidence of Implementation

To confirm lawful implementation, the following evidence is submitted in support of this application:

- Photographs of Demolition of Existing Structures (July to August 2024)
- Photographs of Site Remediation (August to November 2024)
- Photographs of Partial Demolition of Boundary Wall (November 2024)
- Photographs of Formation of Hardstanding and tarmac areas + s.278 works (December 24 to March 2025)
- Photographs of Construction of Haul Road (March 2025)
- Photographs of Associated Enabling Works (Nov 24 to March 2025)

- Photographs of Enabling Works Completed (May 2025)
- WBC Acknowledgement of Form 6: Commencement Notice
- Statutory Declaration signed by Mark Hobden, Berkeley Homes (Southern) Limited

The works described above constitute **material operations** as defined in Section 56(4) and were carried out in accordance with the approved plans. Therefore, the S.73 Permission has been implemented and development has commenced on site.

Pre-Commencement Conditions

We confirm that all relevant pre-commencement conditions were discharged prior to the commencement of works. Some of these conditions were submitted and approved following the Original Permission and prior to the approval of the subsequent S.73 Permission.

As a result, these pre-commencement conditions were reclassified as compliance-only conditions within the decision notice of the S. 73 Permission. There were no pre-commencement conditions within the S. 73 Permission.

The discharge of the following conditions was approved as follows:

AWDM/0140/24 –Discharged in relation to the Original Permission (Approved 21 May 2024):

- Condition 11 – Odour Management Plan
- Condition 12 – Remediation Communications Strategy

AWDM/0105/24 - Discharged in relation to the Original Permission (Approved 21 May 2024):

- Condition 9 (i–iv) – Contamination Investigation and Remediation Scheme
- Condition 15 – Construction Management Plan

Additional conditions have been discharged following the grant of the S.73 Permission. These conditions and their triggers are listed below:

AWDM/1572/24 - Discharged in relation to the S.73 Permission 24 (Approved 24 April 2025):

- Condition 13 – Piling *(Prior to Foundation works)*
- Condition 17 – Surface Water Drainage *(Prior to Commencement with the exception of demolition, clearance works and remediation)*
- Condition 20 – Foul Drainage *(Prior to Commencement excluding clearance works)*
- Condition 29 – Accessibility *(Prior to Commencement with the exception of demolition, clearance works and remediation)*
- Condition 36 – Sub-station *(Prior to the installation of the Electricity Sub-Station)*
- Condition 34 (partial approval) – Fire Hydrants & Water Supply (location only) *(Prior to Commencement with the exception of demolition, clearance works and remediation)*

Where necessary, copies of the relevant decision notices and discharge confirmations issued by the Local Planning Authority are enclosed for reference.

Condition 21(i) of the S.73 Permission

It is acknowledged that Condition 21(i) has not yet been discharged. However, it is the applicant's position that this condition does not prevent lawful commencement of the development, as it is not a "true" pre-commencement condition in planning terms.

The condition reads as follows:

21. Energy & Water Efficiency

(i) The development hereby approved shall (unless alternatives are agreed in writing by the Local Planning Authority), incorporate sustainable energy and heat management measures, in accordance with the details in the submitted Energy Assessment (Revision V1.4 - dated 17th January 2024). ***If a feasible and viable connection to the District Heating Network cannot be demonstrated, prior to the commencement of development (excluding demolition, remediation works and groundworks)*** *the Applicant must submit an alternative energy strategy to be approved by the Local Planning Authority in writing."*

The key point is that the condition expressly allows demolition, remediation works and groundworks to take place before it is discharged. As detailed above, these types of works are recognised in Section 56(4) of the Town and Country Planning Act 1990 as "material operations," which are sufficient to lawfully implement a planning permission.

Since the condition does not prohibit these operations from occurring prior to discharge, and those operations have taken place on site, as demonstrated by the evidence submitted, lawful commencement has occurred in accordance with Section 56(2) of the Act.

In planning law, only conditions that explicitly restrict *all* development activity until they are discharged (typically using the wording "no development shall commence until…") are considered "true" pre-commencement conditions. Condition 21 does not fall into this category.

As such, the existence of this undischarged condition does not invalidate the works already undertaken or affect the lawfulness of the commencement of development.

Conclusion

On the basis of the evidence presented and in line with the legislative framework under the Town and Country Planning Act 1990 (as amended), it is our contention that the development permitted under the S.73 Permission was lawfully commenced prior to the expiry of the permission and has therefore been implemented.

Accordingly, we respectfully request that the Local Planning Authority issue a Certificate of Lawfulness confirming the lawful commencement of the permission.

If you have any further queries or require further information, please contact me on 01903 248777.

Yours sincerely
ECE Planning



Sam Sykes MRTPI
Director