Expiry Date - 27/11/2025

Development Management – Delegated Officer Report

Application Number: AWDM/1247/25 **Recommendation – ISSUE**

Site: **The Atrium 3 The Causeway Worthing West Sussex**

Proposal: **Application for a Lawful Development Certificate to confirm that material operations have commenced on site.**

Date of site visit: 08.08.2024 (NOTICE/0012/24)

Neighbours checked: N/A

Background, Site and Surroundings

The site consists of a brick-faced, building, primarily 2-storeys in height plus basement located on the east side of The Causeway. Originally built as offices for Lloyds Bank Registrars, it was occupied by West Sussex Health Authority (most recently West Sussex NHS Clinical Commissioning Group) from the mid-1990s until 2022. The building is currently empty and boarded up.

Prior Approval was granted in 2020 under NOTICE/0007/20 for a change of use from offices (Use Class B1a) to 48no residential units (C3) comprising 11no studios, 33no 1 bedroom and 4no two-bedroom flats.

Planning permission was subsequently granted in 2022 under AWDM/0918/22 for elevational changes to the building in association with the prior approval for change of use to residential apartments comprising:

- Replacement of Crittall windows with anthracite slimline aluminium windows (Part L compliant);
- Entrance lobbies re-clad;
- Atrium re-clad in light reflective cladding and new full-height glazing inserted;
- Roof parapet raised to allow for added insulation to existing roof and fall prevention balustrade added;
- Private terraces formed to side and rear ground-floor flats with glazed privacy screens;
- New light-wells to rear.

The planning permission AWDM/0918/22 was not subject to any pre commencement conditions.

The Prior Approval NOTICE/0007/20 lapsed in 2023.

A further Prior Approval was granted in 2024 under NOTICE/0012/24 for a similar proposal comprising change of use from offices (Use Class E(g)(i)) to

48 no. residential units (C3) comprising 15 no. 1 bed 1 person, 28 no. 1 bed 2 person and 5 no. two bedroom 3 person flats.

Proposal

The current application seeks confirmation by an application for a Certificate of Lawfulness for an existing development that works to implement the planning permission AWDM/0918/22 have lawfully 'begun' within the meaning of S56 of the Town and Country Planning Act 1990 and that the planning permission remains extant.

A supporting statement submitted with the application describes the building operations as having been carried out as:

- Removal of all existing windows on the south and west elevations,
- Installation of some replacement windows in accordance with the approved drawing 2131/210.
- Structural alterations undertaken to window reveals in preparation for installation.
- Installation of drainage infrastructure connected with parapet roof and insulation works.

It is stated that these works were carried out within 3 years of the date of the permission.

Window removal and installation
The application is supported by various Google Street view images showing the building with the former windows (dated March 2009), and with all windows removed (dated June 2023) together with "*associated structural works for the proposed windows."*

Drainage works
The drainage works associated with the raising of the parapet wall are described as works necessary to prevent pooling, overflows and structural damage. The works are described as "*The existing slab has been opened and 110mm and 150mm diameter UPVC drains have been laid*." These were assessed by the appointed Building Control Surveyor who concluded that they have been installed with good line and falls. The report confirms that ground-floor connections have been installed, and knuckle bends have been adopted. Easy bends have been installed for SVPs rising to the upper floors.

It is stated that the drains have been air tested before backfilling and have been tested in the presence of the building control engineer. It is stated that these drainage works were required as a direct and deliberate part of the approved building operations concerning the parapet and have a clear functional and consequential relationship with the approved elevations.

The application is supported by a surveyor's inspection report (September 2022) confirming start of works, a copy of the Building Control Notice (1st Feb

2022), and an email from the appointed Building Control Surveyor (4th June 2025).

It is purported that these works constitute a material operation under S56(2) of the Act and are an integral and necessary part of the implementing the planning permission [AWDM0918/22] and therefore constitute a material operation under S56(4) of the Act such that the permission has been implemented and remains extant.

Consultations:

The Council's Planning Lawyer has identified a number of false statements and inaccuracies contained within the submitted Planning Statement.

That aside, the available evidence is sufficiently robust in relation to the removal and replacement of the windows in the building in accordance with the planning permission granted under AWDM/0981/22 and within the relevant timeframe, they are satisfied on the balance of probability that the Certificate of Lawfulness may be issued.

Representations: N/A

Relevant Planning Policies

The Town and Country Planning Act 1990 (as amended) S56 'Time when development begun'.

Planning Assessment

The relevant considerations are matters of fact and degree.

Section 56 TCPA 1990 states:

(2) For the purposes of the provisions of this Part mentioned in subsection (3) 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.

(4) In subsection (2) "material operation" means—

(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.

Windows

The planning permission AWDM/0918/22 includes the removal of the existing windows and replacement with new aluminium windows.

The submitted evidence showing the removal of the pre-existing windows, and other Google Street View imagery (dated Sept 2024) showing the insertion of the new permitted window frames in the south and west elevations of the building can be considered as works "*comprised in the development*" for the purposes of S56(2). These works clearly took place within the appropriate timeframe for implementing AWDM/0918/22.

However, the nature of these works does not strictly accord with works amounting to a material operation as set out in S56(4). These works would more accurately be described as an alteration to an existing building – which isn't covered in S56(4).

The Applicant's statement purports that Section 56(4)(a) states that a material operation includes "any building operation in the course of the erection of a building **or of any works for the alteration of a building**". However, this is inaccurate. The words highlighted in bold here do not in fact appear in S56(4)(a).

This would suggest that a planning permission granted for development works that are not specifically included within the definition of a 'material operation' set out in 56(4)(a) to (e) (i.e. such as an 'alteration' to a building) could never be taken to have 'begun' for the purposes of S56(2).

The Council's Legal Officer has since identified a high court case that specifically dealt with this issue.

The case itself involved examination of the provisions of the S43 of the TCPA 1971 (the predecessor to what is now section 56 of the TCPA 1990) albeit what is now a 'material operation' was then a 'specified operation'. The High Court said:

"*That leaves a minority of cases, of which this case is an example, where development is undoubtedly carried out even though it does not involve any specified operation. Whether such development has been begun will be a question of fact for the decision-taker… My approach to section 43 merely recognises the reality: not all development requiring planning permission will necessarily involve the carrying out of a specified operation.* ***It must be possible to begin such development for the purposes of complying with***

conditions imposing time limits, *otherwise the imposition of such conditions would be unreasonable, and therefore unlawful."*

The application is therefore considered to be successful in relation to the windows. The removal and replacement of the windows in the building was comprised in the development approved under AWDM/0918/22. The evidence is clear that some of the permitted works have been implemented, and this took place within the relevant 3-year period for implementation.

Drainage

The evidence submitted here includes the surveyors report dated September 2022. However, the planning permission AWDM/0918/22 was not granted until October 2022. The work the building surveyor inspected cannot therefore be a material operation comprised in the development permitted by AWDM/0918/22.

The email from the appointed Building Surveyor dated June 2025 expressly states that the writer cannot confirm if development has begun for planning purposes. The email doesn't explain why it is considered a meaningful start have been achieved for building regulations purposes.

The Council's Senior Building Control Inspector notes that there is no evidence within the report dated September 2022 that the drain runs that were inspected served the roof behind the proposed raised parapet. The site notes refer to SVPs which would serve the foul system only. It is stated that in the absence of roof layout and drainage plans it is not possible from the submitted photos alone to determine whether the drainage works serve the roof.

The evidence is inconclusive that the drainage works that have taken place relate to the planning permission granted by AWDM/0918/22. It is considered the application therefore fails in respect of the drainage works.

Recommendation

ISSUE Certificate for the reason: -

The Local Planning Authority is satisfied on the balance of probability that the development granted by AWDM/0918/22 was begun for the purposes of S56 of the Town and Country Planning Act 19990 (as amended) within three years of the granting of planning permission (and the planning permission remains extant).

Is recommendation contrary to letter(s) of representation? N/A

Case Officer:	Jo Morin	Date: 02.12.2025
Authorised by:	Peter Barnett	Date: 3 December 2025