

Planning Department

New Forest District Council
Appletree Court
Lyndhurst
SO43 7PA



12th October 2023

Dear Mr Natt

Application for a Certificate of Lawfulness (Proposed) for the continued implementation of planning permission 19/10007 - 10 dwellings comprised; 3 pairs of semi-detached houses; 4 detached houses; garages to plots 7 & 8; associated parking, access & landscaping; demolition of existing at The Coal Yard, Vicarage Lane, Hordle SO41 0HS

This application demonstrates that a lawful commencement was made on site through a material operation before the expiry of 19/10007 on 5th August 2023.

The permission had been granted on 5th August 2020 and was given the standard three year period for commencement of works.

The consent was granted subject to conditions of which conditions 3, 4, 5, 7, 9, 10, 14, 15 and 19 required details to be submitted prior to the commencement of development. All the details in relation to these conditions have been submitted and the majority of these conditions have been discharged by the accompanying discharge letters.

The onus of proof in this type of application is on the applicant, and the council needs to consider whether, on the facts of the case and relevant planning law, the specific works (continuance of the development) is or would be lawful. Planning merits are not relevant at any stage in this particular application.

Section 56(2) of the Town and Country Planning Act 1990 provides 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. This means that permissions may be kept alive indefinitely and remain legally extant and capable of full implement the development have commenced prior to the expiry of the permission. Section 56(4) of the Act lists material operations as:

Any work of construction in the course of erection of a building;

*aa) **any work of demolition of the building;***

b) the digging of a trench which is to contain the foundations, or part of the foundations of any building;

c) the laying out of any underground main pipe to the foundations or part of the foundations of a building, or to any such trench mentioned in para.(b);

d) any operation in the course of laying out or constructing a road or part of a road.

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MC Plan & site services inspected the site on 4th August 2023 (their report accompanies this letter) and confirmed that a 600mm wide, 3m long foundation to plot 4 had been dug prior to the expiry of the planning permission and thus have constituted a material operation. Furthermore accompanying letter is an email exchange between Paul Wyatt from Amirez Ltd and Rochard Natt Senior Planning officer from NFDC in which Paul's sends this information to Richard on 4th August 2023 and Richard confirms on the same date:

"Thank you for your email with attached letter from Building Inspector and photos which confirm the digging of a trench for the foundation of Plot 4.

I will attach to planning file.

It is my understanding that the digging of the foundation is a material operation that would constitute an implementation of planning permission and based upon the details submitted, it is my informal view that this consists a commencement. Should you wish to have anything more formal, you can apply for a LDCE".

Photographs of the foundation trench and the existing building having been removed are enclosed at the end of this statement.

In addition, a New Forest District Council Officer carried out a compliance check on the 10/08/2023 and confirmed:


"This was a check up visit to ensure that development had commenced as stated by the developer. It has".

Lastly on 4th August a CIL Acknowledgement of the previously submitted Form 6 Commencement notice was received and this further piece of evidence accompanies this submission.

The Gabbitas case makes it clear that a certificate should be granted if the authority has no evidence of its own or from others to contradict that of the applicant. The test is 'on the balance of probability'. The evidence contained within this letter and accompanying it provides considerable weight to the case for a certificate to be granted. The evidence is not imprecise or unclear, and the Statutory Declaration is important in providing evidence which cannot be challenged.

On this basis, the authority should now be satisfied that the implementation of the permission can lawfully proceed under the terms of permission 19/10007 and. I look forward to receiving confirmation.

Yours Sincerely



Matt Annen BSc MSc, MRTPI

Director



Site Photos showing a material start has been made.









