

REPORT SUMMARY

REFERENCE NO - 22/03442/LDCEX		
APPLICATION PROPOSAL		
Lawful Development Certificate (Existing) – Partial demolition of the rear extension of the former Water Margin building (No.141), and demolition of a connected outbuilding to the former Lloyds Bank building (No.151) and continued implementation of the development permitted by planning permission 17/03335/FULL (as amended by 19/01497/FULL)		
ADDRESS Site Of 141 And 151 London Road Southborough Tunbridge Wells Kent		
RECOMMENDATION GRANT (see section 11.0 of report for full recommendation)		
SUMMARY OF REASONS FOR RECOMMENDATION		
<ul style="list-style-type: none"> • The purpose of this Certificate of Lawful Existing Use or Development (CLEUD) application is to determine whether works amounting to a 'material operation' (as defined by Section 56(4) of the Town and Country Planning Act 1990 (as amended) have been undertaken in respect of the planning permission granted on 12th September 2019 (ref: 19/01497/FULL); • That September 2019 permission was a variation of a planning permission approved on 20th September 2018 (ref: 17/03335/FULL) which required development to commence within three years of the permission being granted (i.e. by 20th September 2021); • Such works amounting to a 'material operation' <u>have</u> been undertaken within three years of the September 2018 permission being granted, through the demolition of an attached outbuilding to one side of the former Lloyds TSB bank and the removal of a rear section of the former Water Margin building; • Therefore both planning permissions are extant and are capable of lawful future implementation; • As such, it is considered that a CLEUD should be granted. 		
INFORMATION ABOUT FINANCIAL BENEFITS OF PROPOSAL		
The following are considered to be material to the application:		
Contributions (to be secured through Section 106 legal agreement/unilateral undertaking): N/A		
Net increase in numbers of jobs: N/A		
Estimated average annual workplace salary spend in Borough through net increase in numbers of jobs: N/A		
The following are not considered to be material to the application:		
Estimated annual council tax benefit for Borough: N/A		
Estimated annual council tax benefit total: N/A		
Estimated annual business rates benefits for Borough: N/A		
REASON FOR REFERRAL TO COMMITTEE		
Tunbridge Wells Borough Council are the landowners of part of the site (access through Yew Tree Road car park)		
WARD Southborough & High Brooms	PARISH/TOWN COUNCIL Southborough Town Council	APPLICANT Mr Philip Goodman AGENT Ms Gozde Kemal

DECISION DUE DATE	PUBLICITY EXPIRY DATE	OFFICER SITE VISIT DATE	
26/01/23	N/A	Various	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
Related applications:			
21/00651/LBC	Listed Building Consent: Restoration and conversion of former Water Margin to bring the listed building back into use and repair by the demolition of existing rear extension and creating 3 no. 2 bedroom cottages (modern rear extension already demolished)	Granted	26/04/21
19/01497/FULL	Minor Material Amendment - Variation of Condition 2 of Planning Permission 17/03335/FULL. Amendments to plans to include various alterations to window/door positions and profiles on all elevations; re-positioning of dormer windows on east and north elevations; substitution of single dormer window for twin dormer window plus new Juliet balcony on north elevation; additional car park opening in south elevation; change of design of link structure to comprise a combination of clay roof tiles and an aluminium standing seam roof covering; re-siting of cycle store and alterations to layout of front garden areas.	Granted	12/09/19
17/03336/LBC	Listed Building Consent: Restoration and conversion of the former Water Margin to create 3no. cottages & development of former Lloyds Bank site to form 17no. residential units with 17no. parking spaces	Granted	19/01/18
17/03335/FULL	Restoration and conversion of the former Water Margin to create 3no. cottages & development of former Lloyds Bank site to form 17no. residential units with 17no. parking spaces; and laying out of 5 additional parking spaces to serve the adjacent site	Granted	20/09/18

1.0 DESCRIPTION OF SITE

- 1.01 The site is located within Southborough town centre along the busy A26 London Road. It comprises the former Water Margin restaurant and the former Lloyds bank at 141 and 151 London Road. The site area is approximately 0.22 ha.
- 1.02 The former Water Margin restaurant, which has been vacant for a number of years, is an 18th century Grade II Listed building, originally a cottage then subsequently a public house (the Bat and Ball) and more recently a restaurant. The building has a timber frame with a brick lower floor, white weatherboarding to the front and south at first floor and a clay tiled roof. It is two storeys high with 3 dormers within the attic

space. The original building has been poorly extended at ground floor level to the front and rear.

- 1.03 To the north of the Water Margin is the Southborough Hub site, a recent mixed use development, comprising a theatre / community hall, Town Council offices, library, medical centre, commercial units and 69 dwellings.
- 1.04 The former Lloyds Bank building at 151 London Road has also been vacant for some time. It is an Edwardian building constructed from brick beneath a tiled roof with large chimneys and tiled gable projections. It is two storeys high and has a basement. There is a large area of hardstanding to the front and north side of the building, which was used for car parking. This is set behind a brick wall and is accessed via two vehicular access points from London Road. The whole site is now surrounded by hoardings.
- 1.05 The Water Margin and Lloyds Bank curtilages back onto the Yew Tree Road car park, which is included within the Southborough Hub allocation under Policy AL/SO2 in the Site Allocations Local Plan 2016. The application site boundary includes the Yew Tree Road car park (as it is proposed that the site is accessed via this).
- 1.06 To the south are the Gallards Almshouses, which have a parking area accessed off Yew Tree Road close to the main road junction.

2.0 PROPOSAL

- 2.01 Planning permission for *'Restoration and conversion of the former Water Margin to create 3no. cottages & development of former Lloyds Bank site to form 17no. residential units with 17no. parking spaces; and laying out of 5 additional parking spaces to serve the adjacent site'* was granted on 20 September 2018, subject to various conditions and a S.106 agreement pursuant to reference 17/03335/FULL. That permission is subject to the standard three-year time limit for the development to be commenced. In that case, the deadline was 20th September 2021.
- 2.02 A further planning permission was granted for various amendments to 17/03335/FULL on 12th September 2019 (ref: 19/01497/FULL). This too was subject to an implementation deadline of 20th September 2021.
- 2.03 Planning legislation within S56(4) of the Town and Country Planning Act 1990 (as amended) allows that where certain works have taken place within the requisite three-year time limit, the permission is considered to have been lawfully implemented and can subsequently be completed at any point thereafter.
- 2.04 This CLEUD application therefore seeks confirmation that development authorised by 17/03335/FULL (as amended by 19/01497/FULL) did lawfully commence within the three-year time period (i.e. by 20 September 2021) through the undertaking of various works.
- 2.05 The applicant has provided several plans from the 2019 permission in support of the application. In arriving at a recommendation, Officers have also had regard to other evidence in their possession relating to this matter which is outlined in the Appraisal section below.

3.0 SUMMARY INFORMATION

- 3.01 Not applicable given the nature of the application

4.0 PLANNING CONSTRAINTS

4.01 Not applicable as this is an application for a CLEUD

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)
Town and Country Planning Act 1990 (as amended)

6.0 LOCAL REPRESENTATIONS

6.01 None received

7.0 CONSULTATIONS

7.01 Not applicable as this is an application for a CLEUD.

8.0 APPLICANT'S SUPPORTING COMMENTS

N/A

9.0 BACKGROUND PAPERS AND PLANS

Application form

1725-01B- Block Plan and Site Location Plan

1833-MEB-LB-XX-DR-A-3-200-B Proposed Landscape Plan

1833-MEB-LB-XX-DR-A-3-201-B Proposed Ground Floor and First Floor

1833-MEB-LB-XX-DR-A-3-202-B Proposed Second Floor and Roof Plan

1833-MEB-LB-XX-DR-A-3-300-B Proposed Elevations

10.0 APPRAISAL

10.01 This application seeks a Certificate of Lawful Existing Use or Development (CLEUD) for the lawful implementation of planning permission 19/01497/FULL. CLEUD applications such as this are determined on whether the evidence proves, based on legislative requirements, that the development has been lawfully implemented within the requisite three year time period.

10.02 NPPF and Local Plan policies are not determinative in this case, except where there is guidance specifically relating to the handling of CLEUD applications. Neither is the impact of any development upon matters such as the significance of heritage assets or highway safety, as those have already been determined by the LPA in the determination of the original planning application.

Evidence

10.03 The applicant has provided five plans from the later permission (19/01494/FULL). In the application form they also state;

- They are seeking a CLEUD to confirm the permission is still 'valid' (i.e. it has been implemented) and the permitted works can be undertaken as per submitted/previously approved relevant documents (and conditions).
- The application form also claims that change of use of the former bank to a residential use is permitted development, however this is not legally correct as a prior notification is required to be submitted to the Local Planning Authority beforehand. The outcome of this CLEUD application does not turn on this point.

Council's own evidence

Conditions submission

- 10.04 Various submissions have been made to the LPA to discharge conditions attached to the above planning permission;

Reference number	Date of decision	Description	Decision
21/03214/SUB	10.01.2022	Condition 10 (External Materials - Lloyds Bank), Condition 12 (External Materials - Water Margin), Condition 20 (Cycle Storage) and Condition 22 (Refuse Storage)	Granted
21/02977/SUB	23.12.2021	Condition 3 (Construction Environmental Management Plan) and Condition 23 (Sustainability Report)	Granted
21/02811/SUB	19.05.2022	Condition 8 (Internal Sound Levels), Condition 9 (Internal/External Sound Levels) and condition 15 (Biodiversity report)	Refused

Evidence provided to LPA in September 2021

- 10.05 In September 2021, the case officer for the 2019 permission was contacted by the agents acting for the former owners (a development company who have since ceased trading). The agent advised that works had taken place before 20/09/2021 amounting to the demolition of an outbuilding next to the former Lloyds Bank. Photographs of the demolition works were provided.
- 10.06 The removal of this standalone building will enable construction of the western wing of the development. The approved drawing 1833-MEB-LB-XX-DR-A-3-201-B shows the approved extension in place of the former connected outbuilding, as does the landscaping drawing/block plan 1833-MEB-LB-XX-DR-A-3-200-B.
- 10.07 In addition to this, a section at the rear of the former Water Margin was removed between 2018 and 2019 (to accommodate a staff car park at the back of the Southborough Hub, which was approved as part of the planning permission for that development). Drawing 1725-04 (existing elevations of former Water Margin) show the original rear extension, and 1725-06A shows its removal.
- 10.08 The case officer responded on 29th September 2021 that the works would be likely to amount to a material start, however any Officer advice contained within e-mail exchanges is only informal advice; it is not a formal determination of the Council. Such formal determination would need to be in form of an application for a CLEUD.
- 10.09 This advice was reiterated in an e-mail to the new owners dated 18th October 2022.

TWBC aerial photography

- 10.10 Images shot in 2019 and 2020 clearly show the partial removal of the rear section of the former Water Margin has been undertaken.

Assessment of evidence

- 10.11 Strictly speaking, the application seeks an LDC under section 191 of the 1990 Act (as amended) for existing development), namely that works have been undertaken which comply with the approved plans.

- 10.12 In considering this application the Council must do so against the evidence submitted by the applicant and also its own evidence. It is the latter that carries more weight in this case since very little evidence has been formally submitted with this application.
- 10.13 In the case of applications for existing use, if a LPA has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 10.14 In determining the application there are two principal questions:
1. Were these limited works sufficient in themselves to qualify as a commencement under section 56?
 2. If so, is the 2019 permission precluded from implementation by other outstanding matters, namely non-compliance with conditions precedent?

Question 1: Were these limited works sufficient in themselves to qualify as a commencement under section 56?

- 10.15 The works appear to have been undertaken with the intention to formally commence the permission (as no other work has taken place since, as per the case officer visit of 06/01/2023) and the developer is likely to be aware of the need to complete the work by the necessary date. This adds weight to the declared date of 17/09/2021 for the demolition of an outbuilding next to the former Lloyds Bank. The partial demolition of the extension to the rear of the former Water Margin took place long before this, as evidenced by the Council's aerial photography dated 2019.
- 10.16 The removal of the outbuilding adjacent to the former Lloyds Bank and the partial removal of the rear extension of the former Water Margin can be seen on site. There is photographic evidence of this work having being undertaken before 20th September 2021, which was provided to the LPA shortly after it was undertaken. This is considered sufficient evidence that the works had, on the balance of probability, taken place by the relevant time.
- 10.17 Very little is needed to implement a permission for operational development. Section 56(2) records that development of land shall be taken to have been begun on the earliest date on which any 'material operation' comprised in the development begins to be carried out. Section 56(4) specifies that the term 'material operation' encompasses:
- (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.
- 10.18 S.336 defines 'building' as including 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;'. Therefore, partial demolition of a building can count as a 'material operation'.

- 10.19 Thus the nature of the works are such that they are considered to be 'material' so far as the 2018 and 2019 permissions are concerned. The partial demolition therefore meets with S.56(2)(aa).

Question 2: is the 2019 permission precluded from implementation by other outstanding matters, namely non-compliance with conditions precedent?

- 10.20 Irrespective of whether operational works sufficient to constitute a commencement of a permission have taken place, it can also sometimes be the case that failure to comply with 'conditions precedent' attached to a planning permission before the deadline for commencement of that permission has passed causes that permission to expire.
- 10.21 The fact that a condition is worded as 'pre-commencement' (i.e. it requires various details to be provided 'before the commencement of development...') does not in itself make it a 'condition precedent'. The test for lawful commencement is whether the pre-commencement conditions that go to the 'heart' of the permission are being breached – i.e. is it fundamentally unacceptable for the development to start without such details being satisfied? This is a matter of fact and degree which is determined by the nature of the development and the context of the site.
- 10.22 The 2019 planning permission contains 23 conditions. None of these require details to be submitted 'prior to the commencement of development', or 'prior to the commencement of demolition' (or similar wording). All are set at a later point in the development – before the commencement of conversion and extension works, before construction works or prior to the first occupation of the development. Such wording does not exclude the demolition or partial demolition of the buildings or ancillary structures.
- 10.23 The advice given in September 2021 and October 2022 stated *'the demolition to the rear of the former Water Margin is trickier to consider in this way as conditions 7, 9 and 12 are prior to commencement of works to the former Water Margin (air quality, materials details and internal/external sound levels) which could be considered to go to the heart of the permission, but again this may not need to be considered if the pipe and bank outbuilding extension have triggered a formal commencement.'* However, on closer consideration of the wording of conditions 7, 9 and 12 their wording does not exclude partial demolition of the rear section of the former Water Margin.
- 10.24 Thus, none of the conditions contained within the 2018 or 2019 permissions can properly be described as 'conditions precedent', which preclude the lawful commencement of the development.

Conclusions on evidence

- 10.25 Significant weight is to be given to the corroborative evidence held by the Council. Contemporaneous photos of the demolition of the former Lloyds bank outbuilding taking place before 20/09/2021 are held; 2018 and 2019 aerial photography proves the partial demolition of the rear of the former Water Margin took place well before the date the permission was due to expire. Weighing up all the evidence it is considered that there is sufficient evidence to prove (on the balance of probability) that the works are lawful.
- 10.26 In summary, it is considered that this application for a Certificate of Lawful Existing Use should be granted.

10.27 The above considerations do not apply to the listed building consent for the conversion work to the former Water Margin (21/00651/LBC) which remains extant until 26/04/2024. This grant of LBC also authorised the removal of the section at the rear of the former Water Margin under the Planning (Listed Buildings and Conservation Areas) Act 1990.

11.0 RECOMMENDATION – GRANT a Certificate of Lawful Existing Use or Development for the following reason:

- (1) The Local Planning Authority is satisfied that sufficient evidence has been provided to demonstrate that works carried out prior to 20th September 2021 (consisting of the demolition of a connected outbuilding at the former Lloyds bank and partial demolition of the rear of the former Water Margin) were material operations for which planning permission was required; and that such works were undertaken in accordance with the approved plans, namely drawing numbers 1833-MEB-LB-XX-DR-A-3-201-B and 1833-MEB-LB-XX-DR-A-3-200-B which show the permitted extension to be built in place of the former connected outbuilding.

Consequently, with reference to Section 54 of the T&CP Act 1990, the Local Planning Authority is satisfied that these works constitute the implementation of planning permission TW/19/01497/FULL

INFORMATIVES

- 1) The submitted documents taken into consideration in reaching the decision are:

Application form

1725-01B- Block Plan and Site Location Plan

1833-MEB-LB-XX-DR-A-3-200-B Proposed Landscape Plan

1833-MEB-LB-XX-DR-A-3-201-B Proposed Ground Floor and First Floor

1833-MEB-LB-XX-DR-A-3-202-B Proposed Second Floor and Roof Plan

1833-MEB-LB-XX-DR-A-3-300-B Proposed Elevations

Case Officer: Richard Hazelgrove

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The reasons set out above in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.