

19 April 2023



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Dear Mr Peacock

### **Comet Square, Hatfield Certificate of Lawfulness of Proposed Use or Development**

On behalf of our client Barratt Developments plc ("Barratt") we enclose an application for a Certificate of Lawfulness (Proposed Use or Development) submitted under Section 192 of the Town and Country Planning Act 1990. This application concerns Comet Square, Hatfield, AL10 8AQ ("the site").

#### **Background**

Following the Grenfell Tower tragedy in 2017, the subsequent Hackitt review and its findings, Barratt Developments Plc has continually maintained its position that leaseholders and residents of buildings 'in scope' should not pay for the remediation of buildings in order to rectify 'life critical fire safety defects'.

This has been further reinforced by our clients commitment and signing of the Department for Levelling up Homes and Communities (DLUHC) developer pledge to retrospectively return to buildings up to 30 years old of 4 storeys/11m and higher to assess and remediate these buildings to a safe standard as set out within PAS 9980.

Following the Grenfell Tower disaster, Barratt have undertaken a detailed review of all of their built schemes. This process has identified a number of buildings which are in part constructed with potentially combustible cladding material, including the aforementioned building. Barratt have committed to replacing the potentially combustible materials with an appropriate alternative non-combustible materials.

Prior to Barratt Developments PLC signing of the developer pledge, brokered by the Home Builders Federation (HBF) in April 2022, a standalone division of the business known as the Building Safety Unit (BSU) was set up to undertake the assessment and ultimately remediate buildings within their portfolio with known 'life critical fire-safety defects'. Please refer to the submitted Purpose Statement for further information.

#### **Proposed Works**

The work of the BSU has identified a number of buildings which are in part constructed with potentially combustible cladding and facing materials. Barratt have reviewed the materials used in the construction of the Comet Square development and have identified areas which may require remediation to ensure compliance with the latest building fire safety regulations.

These are shown on the submitted elevation drawings, and can be summarised briefly as follows:

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- **Existing cladding (highlighted yellow):** Remove existing cladding, remove PIR insulation and install mineral wool insulation. Reinstate existing cladding.
- **Existing cladding (highlighted pink):** Remove existing cladding, remove PIR insulation and install mineral wool insulation. Reinstate existing cladding.
- **Existing glazing (highlighted blue):** Remove existing uPVC spandrel panel and replace with matching aluminium panel.
- **Existing decking to balconies:** Remove existing timber decking and replace with brown aluminium decking.

In order to comply with statutory obligations and also our client's obligations to leaseholders and residents, Barratt Developments PLC wish to ensure that all the necessary town planning requirements and approvals are adhered to, ahead of the phased works.

### Legislative Background

Section 192 of the 1990 Act provides that if any person wishes to ascertain whether any operations proposed to be carried out in, on, under or over land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the operations in question. If the council are satisfied the operations are lawful, they should issue a Certificate to that effect.

Therefore, this application for a Certificate of Lawfulness seeks the council's agreement that the external works shown in this application (building operations) would not constitute 'development' under Section 55 of the 1990 Act, because they are *works of maintenance, improvement or other alteration of a building which do not materially affect the external appearance of the building*. As such the proposed works would be lawful and not require planning permission.

### Submitted Information

The application has been submitted via the Planning Portal and the relevant application fee will be paid electronically. The following information prepared by ATP Architects on behalf of Barratt describes the proposed building operations and is being submitted for approval:

- Site Location Plan;
- G2120 B1 (20) 220 Rev J - Block 1 and 2 Elevation 1 and 2
- G2120 B1 (20) 221 Rev E - Block 1 and 2 Elevation 3 and 4
- G2120 B1 (20) 222 Rev E - Block 1 and 2 Elevation 5, 6 and 7
- G2120 B3 (20) 206 Rev F - Block 3 Elevation 1A and 1B
- G2120 B3 (20) 207 Rev J - Block 3 Elevation 2A and 2B
- G2120 B3 (20) 208 Rev F - Block 3 Elevation 3 and 4
- G2120 B4 (20) 221 Rev F - Block 3 Elevation 3 and 4
- G2120 B4 (20) 222 Rev D - Block 3 Elevation 5, 6, 7 and 8
- G2120 B4 (20) 220 Rev F - Block 3 Elevation 1 and 2

### Assessment of Lawfulness

In accordance with Section 55 of the 1990 Act, the judgement that must be made is whether the proposed operations would result in an overall material effect to the external appearance of the building. The effect upon the external appearance of the building when considered as a whole is relevant, not the effect upon an isolated part. Whilst works to the exterior the building are proposed, the supporting information which has been submitted demonstrates with sufficient precision and reliability that the proposed works would not *materially affect the external appearance*.



Relevant case law<sup>1</sup> confirms that any assessment of materiality should also take into account the nature of the building, such as its age and character, and whether it is listed or located within a Conservation Area. The building is not listed or located within a Conservation Area. The building is of contemporary appearance, characterised by its predominant use of cladding panels. Following the works this appearance and character would be maintained.

The proposed works would not materially affect the external appearance of the building and in accordance with Section 55 of the 1990 Act, they do not constitute development as defined. Therefore, planning permission is not required. This application seeks to confirm this position through the issuing of a Certificate of Lawful Development.

This application has been submitted to enable important fire safety works to be carried out. We trust that sufficient information has been provided to enable officers to assess this application and issue a Certificate, and we would be grateful to receive this as quickly as possible. In the meantime, should you have any questions please do not hesitate to contact Elisha Robjant ([elisha.robjant@savills.com](mailto:elisha.robjant@savills.com)) in the first instance.

Yours sincerely,



**Joseph Daniels**  
Associate Director

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<sup>1</sup> Burroughs Day v Bristol City Council [1996] 1PLR 78; [1996] 1EGLR 167; [1996] 19EG 126: [1996]