

2 RELEVANT LEGISLATION

a. Section 191 of the TCPA 1990 states that: -

(1) If any person wishes to ascertain whether-

- a) Any existing use of buildings or land is lawful;*
- b) any operations which have been carried out in, on, over or under land are lawful; or*
- c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,*

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if-

- a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*
- b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if-

- a) the time for taking enforcement action in respect of the failure has then expired; and*
- b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.*

(4) *If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.*

(5) *A certificate under this section shall-*

- a) *specify the land to which it relates;*
- b) *describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);*
- c) *give the reasons for determining the use, operations or other matter to be lawful; and*
- d) *specify the date of the application for the certificate.*
- e) *The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.*

b. *In relation to the time when a development has begun the TPCA 1990 Section 56(1)(a) states the development of land shall be taken as initiated if the development consists of the carrying out of operations, at the time when those operations begun. Section 56(2) clarifies this further, with development being taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Of relevance here, Section 56(4) states a “material operation” as noted in Section 56(2) means:*

Section 56(4) states that material operation to include the following:

- a) *any work of construction in the course of the erection of a building; [F2(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.*
- c. In accordance with the legislation, the application submissions provide the information required by Part (5) (a), (b), (c) and (d), and the purpose of the statements was to expand upon the information provided and to explain the reasoning for determining that the existing development is lawful in accordance with the TCPA. Specifically, the current application is proceeding on the basis that the relevant period for taking commencement occurred prior to the expiry date imposed in Condition 1 of the planning permission granted (application reference 4/07/2665/0).