

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H04-0902-23 **Applicant:** Cook Property Holdings
Proposal: Confirmation that H04-0894-17 for 7 dwellings has been implemented.
Location: Dave Cook Engineering Quadring Road Donington
Terminal Date: 4th December 2023

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

No policies are appropriate as part of this application as this application is submitted as part of Section 191 of the Town and Country Planning Act 1990 which provides that:

(1) If any person wishes to ascertain whether:

(b) any operations which have been carried out in, on over or under land are 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.

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

The current proposal is a lawful development certificate to ascertain whether or not a lawful start has been made of the permitted scheme.

Site Description

The land formed part of a commercial site, with a large warehouse / industrial building to the north west corner of the site. The rear of two residential dwellings which front Crosslands can be seen to the north east, but the rear of one is partially obscured by landscaping. Tall trees to the eastern boundary obscure a pumping station and some garden land. Dwellings to the west beyond the remaining industrial site are obscured by tall trees forming a hedge. There is a medium hedge adjacent the highway and palisade gates.

History

H04-1362-88 - Outline - Residential Development and demolition of existing' warehouse building - Approved

H04-0247-92 - Outline - Residential development & demolition of existing warehouse building - Approved

H04-0196-95 - Outline - Residential development and demolition of existing warehouse building - Approved

H04-0787-97 - Full - Proposed new office building & change of use of extg potato warehouse to use as storage & distribution centre - Approved

H04-0928-98 - Full - Recladding of front elevation of existing store building (Retrospective) - Approved

H04-0600-16 - Full - Erection of 4 dwellings including access, parking and landscaping - Refusal

H04-0894-17 - Full - Erection of 7 family homes - Approved

H04-1195-19 - Details of Written Scheme of Archaeological Investigation (Condition 4 of H04-0894-17) - Approved

H04-0445-20 - Details of site levels, contamination ground report, materials, surface water drainage, landscaping, boundary treatment, storage of waste bins and external service boxes (Conditions 3, 7- parts i and ii only , 8, 9, 10, 11, 12, and 13 of H04-0894-17) - Approved

H04-773-20 - Details of Condition 7 (i, ii, iii) of H04-0894-17 relating to contamination - Approved

Consultation Responses

No comments have been received as a result of the displaying of the site notice.

Planning Considerations

Planning guidance and case law has established that the onus is on the application to provide sufficient information to support the case for the Certificate, however, a local planning authority always needs to co-operate with an applicant who is seeking information.

If the LPA is 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 LPA or a description substituted by them, they shall issue a certificate to that effect; in any other case, they shall refuse the application.

The relevant test to be applied to the evidence is that of the "balance of probability", which is the lesser test to the criminal burden of proof.

Previous Planning Permission

The original application, reference H04-0894-17 was for the development of the site to provide 7 dwellings. The application was approved on 21st November 2017. Several pre-commencement conditions have been discharged since permission was granted, the applicants state that 'a material commencement was undertaken on site on the morning of the 16th November 2020'.

Submitted Evidence

The application is accompanied by:

- Application Form
- Planning Statement with Evidence
- 235-01 SD01 Rev A

Material Operation

To start a development it is necessary to undertake a 'material operation' which is defined in Section 56(4) of the Town and Country Planning Act 1990. There are a number of categories which define a material operation.

The basis of this application is to confirm whether or not the work on site constitutes a material operation, thereby being a lawful start.

Planning Legislation

Section 56 (4) of the Town and Country Planning Act 1990 states that a '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.

When assessed against this section of legislation it can be considered that no construction of a building has taken place, no demolition of a building has taken place, a trench was dug however this does not contain the foundations of a building, there has been no laying of an underground main or pipe to the foundations or part of the foundations, of a building or to any such trench, there has also been no laying out or constructing a road or part of a road. Finally, no change of use has taken place.

Conclusion

On the balance of probabilities it is concluded that no lawful start has been made on site and therefore as the permission has lapsed this does not preserve the permission on site. The evidence submitted during this application process is considered to clearly show what had taken place however, this does not class as a form of development when compared to each relevant section within the legislation to establish that a lawful start has been made on site. It is also important to note that following correspondence with the agent and conducting the site visit it was concluded that this 'trench' that has been dug has since been filled in. As a result, the lawful development certificate cannot be granted.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

- A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
- C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under Delegated Authority.