DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H16-0344-20**	**Applicant:**	**Miss B Wilson**
Proposal:	Application for Certificate of Existing Lawful Development to establish that works which were carried out, constitute the commencement of development permitted under H16-0397-04 - dated 3 August 2005		
Location:	Land South Off Holbeach Road Spalding		
Terminal Date:	23rd June 2020		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2019

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

This application seeks to demonstrate that a material commencement was made in relation to planning permission H16-0397-04 before the expiration of the permission and therefore a certificate of lawfulness should be granted.

Site Description

The site comprises an area of land at the junction of the A151, Holbeach Road and the A16 By-Pass, opposite the McDonalds outlet.

History

H16-0387-04 for the erection of a hotel, pub/restaurant, restaurant and drive through, restaurant and associated works on land off Holbeach Road, Spalding was granted planning permission on 3 August 2005.

The permission was subject to 10 conditions. 8 of those conditions: 2, 3, 4, 6, 7, 8, 9 &10 were pre-commencement conditions.

Subsequently 6 condition compliance applications were submitted and approved prior to the expiration of the planning permission.

H16-0547-10 (Conditions 3, 4, 9 & 10) Approved 23 July 2010
H16-0559-10 (Condition 8) Approved 26 July 2010
H16-0314-06 (Part Condition 7) Approved 4 April 2006
H16-0590-06 (Part Condition 7) Approved 3 May 2006
H16-1214-05 (Condition 2) Approved 15 September 2005
H16-1316-05 (Condition 6) Approved 10 November 2005

H16-0159-10 Renewal of H16-0397-04 was reported to 27 July 2010 Planning Committee and refused on 4 August 2010 for the following reasons:
"The site is situated in the open countryside outside the Development Boundary for Spalding. As such, the proposal needs to be assessed against Policy SG4 of the South Holland Local Plan, 2006. This policy seeks to restrict development in the open countryside to those which are essential in their respective locations. In this case the applicant has not demonstrated that the development is essential in this location, nor that a need exists for the development such as to outweigh its impact on the landscape. As a consequence, the proposal does not comply with Policy SG4 of the South Holland Local Plan 2006.

The proposal needs to be assessed against Policy TC4 of the South Holland Local Plan 2006 which sets out a number of criteria which need to be met in relation to such developments. In this case the applicant has not demonstrated a need for the proposed facilities as required by Criteria 1 of the policy, nor has the applicant demonstrated that there is an established gap in the provision of such facilities. As a consequence, the proposal does not comply with Policy TC4 of the South Holland Local Plan 2006."

Consultation Responses

LCC Highways - No observations

Planning Considerations

This is a legal determination and planning policy is not relevant to the determination as to whether the claimed use is indeed lawful. The decision is based upon the case officer's judgment as to the case being proven on the balance of probabilities.

The key in the determination of this application is whether the applicant has demonstrated on the balance of probability that material operations took place which were sufficient to constitute the implementation of the development within the lifespan of the planning permission.

The submitted evidence (Appendix B) includes diary sheets from the contractor for the works Danaher & Walsh for the period 2/08/10 to 24/11/10.

The critical factor is whether the works undertaken on 2 and 3 August 2010 constituted a material commencement of the planning permission. The diary sheet for 2 August list the following activities:
-Remove existing kerbs and edging from track
-Excavate existing track
-Set up temp compound area with fencing

and for 3 August:
-Clear vegetation from sides of track
-Continue with excavation works
-Make site safe including perimeter fencing, etc

Section 56 of the Town & Country Planning Act 1990 as amended, indicates that a material operation means amongst other things is the laying out and constructing part of a road.

The applicant's case is that the evidence submitted, including the site records obtained from Danaher & Walsh is that such a material operation took place ie there was a clear start made on site consisting of operations in the course of laying out and constructing the access and road to the development.

Reference is made to Appendix C dwg no.10156/203 Proposed Site Clearance for the Site Access S278 Works, the key states existing PCC kerbs and edgings to be taken up, existing carriageway to be excavated to proposed formation levels in the form of the existing track and area of existing boundaries and shrubs to be trimmed to the back of footway. The applicant states these operations

in the laying of the road are clearly identified in the Site Diary Records in Appendix B to have taken place between 02/08/10 and 03/08/10 before the expiration of the planning permission, therefore making a valid start to the works and retaining the planning permission.

This Council in consultation with Lincolnshire County Council as the highway authority had in previous correspondence taken the view that as a S278 agreement was not in place, works could not lawfully take place within the highway and thus there was doubt the permission had been lawfully implemented.

The applicant's statement states that the site diary records of the remaining days provides clear evidence referencing the S278 works, all legally taking place behind the highway boundary meaning that no agreement was needed at the time of the construction with the highway authority.

It goes on that furthermore, the access constructed as part of the planning permission is still currently in place and being used with no enforcement action taken by either the Local Planning Authority or Highway Authority.

Case law has demonstrated that very little is needed to instigate development under Section 56, with the test for commencement not the quantum of work undertaken, but whether the work is related to the planning permission involved, and for the purposes of keeping a permission alive, has also to be more than de minimis.

Conclusion

Given the evidence submitted and in the absence of contrary evidence, it is considered that the applicant, on the balance of probability, has demonstrated that planning permission H16-0397-04 was lawfully commenced by material operations taking place before the permission expired, therefore it is appropriate to issue a certificate of lawfulness.