

Your ref: PP-11974121
Our ref: 1545-2 LMS SB

07 March 2023

32 High Street, Helpringham,
Sleaford, Lincolnshire NG34 0RA
Tel: 01529 421646
Email: admin@rdc-landplan.co.uk
Web: www.rdc-landplan.co.uk

Assistant Director - Planning
Boston Borough Council
Municipal Buildings
West Street
Boston
Lincolnshire
PE21 8QR

Dear Sir

**MESSRS A, S AND I HALL
APPLICATION UNDER SECTION 191 - CERTIFICATE OF LAWFUL DEVELOPMENT
ERECTION OF 31 DWELLINGS, NEW ACCESS AND INFRASTRUCTURE
FOLLOWING DEMOLITION OF EXISTING DWELLING AT LAND OFF STATION
ROAD, KIRTON, BOSTON, PE20 1LQ – LPA REF B/19/0317**

We have submitted the above application via the Planning Portal ref PP-11974121.

The local planning authority granted full planning permission for the above development on the 30th January 2020, subject to a number of planning conditions.

Condition 16 required that:-

"No development shall take place until a Construction Management Plan and Method Statement has been submitted to and approved in writing by the Local Planning Authority, which shall include;

- Phasing of the development to include access construction
- The parking of vehicles of site operatives and visitors
- Loading and unloading of plant and materials
- Storage of plant and materials used in constructing the development
- Wheel washing facilities
- The routes of construction traffic to and from the site
- Strategy stating how surface water run off on and from the development will be managed during construction and protection measures for any sustainable drainage features. This should include drawings showing the drainage systems connect to an outfall during construction. The Construction Management Plan and Method Statement shall be strictly adhered to throughout the construction period".






town planning



landscape architecture



architecture

 @RobertDoughtyConsultancy
 @RDC_Ltd
 robert-doughty-consultancy-limited

Robert Doughty Consultancy Limited
Registered in England No. 4084500
VAT Reg No. 364 7780 17

Your ref: PP-11974121
Our ref: 1545-2 LMS SB

07 March 2023

Following a number of unsuccessful attempts to dispose of the site for development, the landowner took the decision to implement the planning permission to ensure the permission remained extant. Accordingly, as condition 16 (Construction Management Plan) was the only condition which prevented the commencement of development, it was decided to apply to have this condition approved and then to demolish the existing cottage on site. Demolition constitutes development under Section 55 of the Town and Country Planning Act and this demolition would also not trigger the remaining conditions on the planning permission.

A condition compliance application was submitted on the 1st December 2022 (LPA ref B/19/0317/CD1) which was accompanied by a letter setting out that it was the applicant's intention to demolish the existing dwelling on site and that condition 16 was the only condition which prevented that. The local planning authority requested some further information on the 18th January 2023 and this was submitted on the 19th January 2023. The condition compliance was then approved and issued on the 15th February 2023. A notice under Section 80 of the Building Act was also submitted to and approved via a Section 81 counter notice (ref: DEM22007).

On the basis that the substantive planning permission had to be implemented by the 30th January 2023, work commenced on the demolition of the small cottage on the Wash Road frontage and work was completed by the 26th January 2023. The demolition work was carried out in accordance with the Construction Management Plan, albeit that the Construction Management Plan ('the plan') related to the construction of the dwellings, as opposed to the demolition of the existing dwelling on site. Point 2.0 in the Description of Works in the plan set out the following:-

"Demolition of the existing building on the plot will be carried out as per planning approval prior to commencement of construction works onsite.

The construction of 31 (thirty one) residential units, roadways, utilities, associated hardstanding and landscaping will be included within the project."

The reason for condition 16 on the decision notice reads as follows:-

"To ensure that the permitted development is adequately drained without creating or increasing flood risk to land or property adjacent to or downstream of the development during construction and to ensure that traffic routes are agreed, and in the interests of protecting neighbour's amenity. This condition accords with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan (2011-2036)."






town planning



landscape architecture



architecture

 @RobertDoughtyConsultancy
 @RDC_Ltd
 robert-doughty-consultancy-limited

Robert Doughty Consultancy Limited
Registered in England No. 4084500
VAT Reg No. 364 7780 17

Your ref: PP-11974121
Our ref: 1545-2 LMS SB

07 March 2023

The assessment as to whether the carrying out of approved works in advance of a condition being approved and prior to the expiry of planning permission relies in part to a distinction between whether condition 16 is a conditions precedent which goes to the heart of the permission, or whether it falls into the group of conditions which merely require something to be done before development commences. In *Bedford BC v. Secretary of State* [2008] EWHC 2304 (Admin), HHJ Waksman QC set out a number of questions to be posed in determining whether development had been lawfully commenced or not. He identified a three-stage process of investigation for the decision maker to follow and these are:-

1. Has there been a breach of condition?
2. If so, is the effect of that breach of condition such as to render the development as a whole unlawful? (ie has the *Whitley* principle been engaged?)
3. If so, do any of the exceptions to the *Whitley* principle apply such as irrationality, abuse of power on the part of the planning authority if it sought to enforce or compliance in substance?

The planning permission expired on the 30th January 2023 and work in the form of the demolition of the cottage occurred before this date but in advance of the approval of the condition compliance application on the 15th February 2023.

The work required for the demolition of the dwelling on site did not form part of the approved "Construction Management Plan" for the purposes of the condition in question, in fact the plan drew a distinction between demolition and construction. This was in part due to the fact that the demolition was carried out within the confines of the curtilage of the dwelling and materials handled from Wash Road, rather than Station Road where the construction of the dwellings would be carried out from.

The demolition of the dwelling did not breach the requirements of the condition and therefore the failure to have the condition discharged before development began does not render the whole of the development unlawful and accordingly the *Whitley* principle has not been engaged.

Bearing in mind the approved development authorised the demolition of the dwelling on site, it would be perverse for the local authority to take enforcement action or serve a breach of condition notice.

Our conclusion is therefore that the demolition of the dwelling which was authorised as part of the planning permission for the construction of 31 dwellings amounted to a lawful implementation of planning permission B/19/0317 and we should therefore be



Page 4 of 4

Your ref: PP-11974121
Our ref: 1545-2 LMS SB

07 March 2023

grateful if the local planning authority would issue a Certificate of Lawful Development to this effect.

We understand from our client that there is a housebuilder waiting to carry on with the development which is a committed site within the South East Lincolnshire Local Plan.




Should you have any questions regarding our submission, please do not hesitate to contact us.

Yours faithfully



Lewis M Smith MRTPI



 @RobertDoughtyConsultancy
 @RDC_Ltd
 robert-doughty-consultancy-limited

Robert Doughty Consultancy Limited
Registered in England No. 4084500
VAT Reg No. 364 7780 17