

Development Management Delegated Decision Report

B/23/0099



SUMMARY OF APPLICATION				
Application Reference	B/23/0099			
Application Type	Certificate of Lawfulness (existing use)			
Proposal	Application for a Lawful Development Certificate for an Existing Use or Operation or Activity relating to the demolition of an existing dwelling and the erection of 31 dwellings together with a new access and associated infrastructure allowed under planning reference B/19/0317 on land off Station Road, Kirton, Lincolnshire PE20 1LQ			
Location	Land off Station Road, Kirton, Boston PE20 1LQ			
Applicant	Messr A S and I Hall			
Agent	Mr Lewis Smith, Robert Doughty Consultancy Limited			
Received Date:	08-Mar-2023	Consultation / Publicity Expiry Date:	09-Apr-2023	
Valid Date:	08-Mar-2023	Statutory Expiry Date:	03-May-2023	
Date of Site Visit:		Extension of Time Date:		
Objections received?	No			
5 day notification record:				
	Councillors notified	Date	Response received – date	Ok to continue
Recommendation:	Grant Certificate			
Report by:	Ian Carrington			
Date:	12-May-2023			



OFFICER REPORT

SITE AND SURROUNDINGS:

The application site is located within the settlement boundary of Kirton and consists of an elongated rectangular shaped parcel of land that occupies approximately 1.2 hectares. The access for the proposed development would be taken from Station Road immediately to the north of the site.

DETAILS OF PROPOSAL:

The application seeks a Certificate of Lawful Existing Use or Development to confirm that the consent granted under B/19/0317 for the erection of 31 dwellings and associated infrastructure has been lawfully implemented.

RELEVANT HISTORY:

B/18/0457 - Erection of 31 dwellings including demolition of existing dwelling – Withdrawn 29/03/2019

B/15/0503 - Demolition of existing dwelling fronting Wash Lane and Outline Application for up to 30 dwellings with consideration given to access off Station Road only (all other matters reserved for later consideration) – Refused on 03/03/2016 but allowed on appeal on 28/03/2017.

B/19/0317 - Erection of 31 dwellings and associated infrastructure - approved.

RELEVANT DOCUMENTS / LEGISLATION / GUIDANCE:

Town and Country Planning Act 1990

National Planning Practice Guidance (PPG)

CONSULTATION RESPONSES:

BBC Environmental Health - 'no comments'.

Legal Services Lincolnshire - see file and report.

THIRD PARTY REPRESENTATIONS RECEIVED:

None.

EVALUATION:

The application seeks a Certificate of Lawful Existing Use or Development (CLEUD) to confirm that planning permission B/18/0317 has been lawfully implemented. The matter turns on the key action asserted to have implemented the consent, namely the demolition of an existing dwelling, and on the status of Condition 16 of the permission which stated

“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’.

It is not contested by the applicant that the demolition took place before the Construction Management Plan (CMP) had been approved by the Authority. However the applicant asserts that the demolition was an integral part of the initial consent, and in this regard it is noted that the formal description of B/19/0317 was ‘Erection of 31 dwellings, new access and infrastructure following demolition of existing dwelling’.

The applicant also draws attention to the fact that the demolition works were undertaken to prevent the expiry of the permission, and notes the following relevant chronology:

‘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 applicant goes on to note:

‘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 applicant argues that given the very tight chronology and the subsequent approval of the CMP, and the ambiguity as to whether the demolition work was intended to be subject to the CMP, that it would be perverse to deem that the demolition (and hence the implementation of the consent) was unlawful. In this regard the applicant advances a further related argument, namely that Condition 16 was not a ‘condition precedent’, and asserts that Condition 16 fails to meet the tests for such a condition set out in *Bedford BC v. Secretary of State [2008] EWHC 2304 (Admin)*. If the condition is not a ‘condition precedent’ then it follows that failure to have the CMP approved prior to the demolition work commencing would not render the works unlawful and hence the permission expired.

In order to gain an authoritative view on this latter point the case was referred to the Council’s legal advisors. An email from a senior lawyer at Legal Services Lincolnshire is appended to the planning file, and can be summarised as stating that in the lawyer’s view Condition 16 is not a ‘condition precedent’. She also notes that in some instances demolition does not require planning permission, and that the CMP was approved by the Council. She concludes: ‘Taking all of the above into consideration, and based on what I know of the site, it is my opinion that it would not be in the public interest to say that the development has not been commenced and that the planning permission is now extant’.

Determination of an application for a CLEUD must be undertaken in accordance with the provisions of Section 191 of the Town and Country Planning Act 1990. These indicate that the burden of proof lies with the applicant. The relevant test is the balance of probability and Local Planning Authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events there is no good reason to refuse the application provided that the applicant's version is precise and unambiguous to justify the grant of a certificate.

CONCLUSION:

In this case the facts are not in dispute. The information supplied by the applicant relating to the demolition works is accepted in good faith, and the chronology of events and other details are largely matters of public record. Similarly, the advice of the Council's legal team is also accepted. On that basis it therefore follows that there is no evidence before the Council to suggest that the development has not been lawfully commenced, and therefore on the balance of probability it is considered appropriate to recommend that the Certificate is issued as sought by the applicant.

RECOMMENDATION: Grant Certificate of Lawful Use

Conclusion:

The Council is satisfied that the consent granted under B/19/0317 for the erection of 31 dwellings and associated infrastructure has been lawfully implemented.

Relevant plans: drawing 1545-2_PL_LP01 Location Plan received by the LPA on 08-Mar-2023

INFORMATIVES / NOTES TO BE INCLUDED ON/WITH DECISION NOTICE
<u>STATEMENT OF PROACTIVE WORKING:</u> In determining this application, the authority has taken account of the guidance in paragraph 38 of the National Planning Policy Framework 2021 in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the Borough.