**OFFICER REPORT**

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**Case No:** 24/02274/CLED **Certificate of existing lawful use**

**Proposal:** **Lawful development certificate to confirm lawful commencement of planning permission reference 19/01294/FUL**

**Location:** **Land East Of Glebe Farm Gidding Road Sawtry**

**Applicant:** **Mr Jack Gandy**

**Grid Ref:** **516270 283642**

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**DESCRIPTION OF SITE AND APPLICATION**

The application is for a Certificate of Existing Use to confirm whether a lawful 'material start' to the permission of 19/01294/FUL (the erection of 6 residential dwellings), through the material operations has occurred at Land East Of Glebe Farm, Gidding Road, Sawtry.

The applicant seeks to establish that the development of 6 residential dwellings (planning application ref 19/01294/FUL) materially commenced, by virtue of the laying of a surface water drainage pipe for the foundations of Plot 86, prior to the expiration of 19/01294/FUL. 19/01294/FUL was permitted on the 19.11.2021 and condition 1 of the permission states 'The development hereby permitted shall be begun before the expiration of three years from the date of this permission' therefore, the applicants seek to establish that development commenced prior to permission 19/01294/FUL expiring on the 19.11.2024.

The application is supported with the following information and consists of:
*Application form received by the Local Planning Authority on 03.12.2024
*Covering Letter dated the 25th November 2025.
*Decision Notice 19/01294/FUL
*Site Location Plan 1455-P2/LOC B
*Hard Landscaping Plan -Plot86 Co-ordinates 458-BHP-XX-XX-DR-C-4001 T3
*Decision Notice 24/80243/COND (Conditions 9, 10, and 1)
*Decision Notice 24/80235/COND (Conditions 5, 6 and 8)
*Condition Tracker 19/01294/FUL received by the Local Planning Authority on 03.12.2024
*Block Plan 1455-P2/02 B
*Master Plan 1455-P2/01 B
*Photo 1 -Titled 21 Bowland Close, Sawtry, Cambridgeshire, England (Date 14/Nov/2024 Time 12:43:55)
-Photo is a close up photo of a trench filled with gravel and brown UPVC pipework.
*Photo 2 -Titled 21 Bowland Close, Sawtry, Cambridgeshire, England (Date 14/Nov/2024 Time 12:43:48)
- Photo is a close up photo of a trench filled with gravel and brown UPVC pipework connected to a black box.
*Photo 3 -Titled 21 Bowland Close, Sawtry, Cambridgeshire, England (Date 14/Nov/2024 Time 12:43:03)
- Photo displays the wider contextual view and shows a digger and soil piles within heras fencing.
*Photo 4 -Titled 21 Bowland Close, Sawtry, Cambridgeshire, England (Date 14/Nov/2024 Time 12:43:47)
- This photo is similar to Photo 3 except from an alternative angle.
*Photo 5 -Titled 21 Bowland Close, Sawtry, Cambridgeshire, England (Date 14/Nov/2024 Time 12:43:51)

- This photo is similar to Photo 1 except from an alternative angle.
*Photo 6 -Titled 21 Bowland Close, Sawtry, Cambridgeshire, England (Date 14/Nov/2024 Time 12:48:30)
- Photo displays the wider contextual view and shows a digger and soil piles within heras fencing. The photo also shows a dump truck in the background. The flume of the brown UPVC pipework can be seen above ground level.
*Photo 7 -Titled 21 Bowland Close, Sawtry, Cambridgeshire, England (Date 14/Nov/2024 Time 12:44:09)
-This close up photo is similar to Photos 1 and 2 except from an alternative angle.
*Photo 8 -Titled 21 Bowland Close, Sawtry, Cambridgeshire, England (Date 14/Nov/2024 Time 12:48:52)
- Photo displays the wider contextual view and shows a digger, dump tuck and soil piles within heras fencing. Dwellings of the wider Vistry site (permitted under applications) can be seen in the background. The flume of the brown UPVC pipework can be seen above ground level.
*Photo 8 -Titled 21 Bowland Close, Sawtry, Cambridgeshire, England (Date 14/Nov/2024 Time 12:44:17)
- This close up photo is similar to Photo 2 except from an alternative angle.

Additional information received in response to LPA query:
-Sawry 6 Topographic survey Rev A received by the LPA 10/01/2025
-For information only hard landscaping plan-coordinates 9458-BHP-XX-XX-DR-C-4001 rev T3 received by the LPA 10/01/2025.

Information available to the Local Planning Authority (LPA):
*Planning History of the site and any associated communication
*Aerial and Street level Imagery
*Community Infrastructure Levy
*Building Control Applications.

**LEGISLATION**
Section 55 of the Town and Country Planning Act 1990: Meaning of "development" and "new development"
Section 56 of the Town and Country Planning Act 1990: Time when development begun and material operation
Article 39 of The Town and Country Planning (Development Management Procedure) (England) Order 2015, SI 595
Section 191 of the Town and Country Planning Act 1990: Certificate of lawfulness of existing use or development

**NATIONAL GUIDANCE AND PLANNING POLICIES**
The planning merits are not for consideration in this case as this application is determined solely on the basis of whether the submitted evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

**PLANNING HISTORY**
19/01294/FUL- Construction of 6 dwellings and associated access, landscaping, drainage and infrastructure, in addition to the 80 dwellings approved under references 1401659OUT and 18/00633/REM. -Permitted the 19.11.2021

24/80235/COND-Discharge Of Conditions 5 (Cycle And Bin Storage), 6 (Parking) and 8 (Levels Condition) of 19/01294/FUL- Conditions Discharged-19.08.2024

24/80243/COND-Discharge of Condition 9 (surface water details), 10 (surface water management) and 11 (Foul water only) for 19/01294/FUL- Conditions Discharged-20.08.2024.

Not associated with this application but relevant to the wider context of the Vistry development:

1401659OUT- Residential development of up to 80 dwellings including access, open space, landscaping, drainage and associated infrastructure- Permitted the 15.04.2016.

18/00633/REM-Approval of reserved matters on land subject to outline permission 14/01659/OUT for 80 Dwellings including access, open space, landscaping, drainage and associated infrastructures-Permitted the 03.08.2018

23/02411/FUL- Temporary construction access to facilitate the construction of six dwellings and associated infrastructure approved under 19/01294/FUL- 19.04.2024.
-Officers note this application was temporarily permitted to facilitate the construction of the permitted six dwellings. Nevertheless, none of the conditions appended to 19/01294/FUL refer to a construction access and this application is determined solely on the basis of whether a lawful 'material start' to the permission of 19/01294/FUL was undertaken.

**CONSULTATIONS**
Parish Council-The Parish Council support the application subject to satisfactory evidence that the work has actually started.

**REPRESENTATIONS**
Officers note comments made by third parties however, the material planning considerations raised in this case are not for consideration. This application is determined solely on the basis of whether the submitted evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

It is also noted that third parties raised concerns that pre-commencement conditions appended to the temporary construction access to facilitate the construction of six dwellings permitted under application 23/02411/FUL had not been discharged. Nonetheless, this application is determined solely on the basis of whether a lawful 'material start' to the permission of 19/01294/FUL (the erection of 6 residential dwellings), through the material operations has occurred at Land East Of Glebe Farm, Gidding Road, Sawtry. None of the conditions appended to permission 19/01294/FUL relate to a temporary construction access.

**SUMMARY OF ISSUES**
Relevant parts of the Town and Country Planning Act 1990 are as follows:

The Local Planning Authority can grant a certificate confirming whether any proposed use of buildings or other land; or any operations proposed to be carried out in, on, over or under land is lawful or not, under Section 192 of the Town and Country Planning Act 1990 (the Act). Should the Local Planning Authority be provided with sufficient information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it shall issue a certificate to that effect; and in any other case they shall refuse the application. If the Local Planning Authority is satisfied that the appropriate legal tests have been met, it will grant a Lawful Development Certificate.

Planning Practice Guidance on Lawful Development Certificates advises that applications must be accompanied by sufficient factual information and evidence for a Local Planning Authority to decide the application and advises that without sufficient or precise information, a Local Planning Authority may be justified in refusing granting a certificate.

The "lawfulness" of proposed development for lawful development certificates is set out in the statutory framework of Section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

A Local Planning Authority can issue a certificate on the balance of probability if the applicant's evidence alone is sufficient, precise, and unambiguous to justify the grant and has no evidence itself,

nor any from others to contradict or otherwise make the applicant's version of events less than probable.

Section 56 of the Town and Country Planning Act 1990 establishes what is considered to be development and under what conditions it is considered that development has begun.

The issue to consider:
The main issue is whether, on the balance of probabilities, permission 19/01294/FUL, relating to the development of six residential dwellings, has commenced prior to the expiration of permission on the 19.11.2024. This assessment will consider the following criteria:

- Statutory time limitations
- Information available to the Local Planning Authority
- Implementation
- Pre commencement condition discharge

Statutory Time Limitations
14 conditions were imposed on permission 19/01294/FUL of which Condition 1 states 'The development hereby permitted shall be begun before the expiration of three years from the date of this permission'.

Permission on the site is bound to the statutory time limitations imposed on its permission in accordance with section 92 of the Town & Country Planning Act 1990. In accordance with the permission (Condition 1) the development should have commence before the 19.11.2024, subject to the prior discharge of any pre-commencement conditions.

Information available to the Local Planning Authority
*Aerial and Street level Imagery
Street level imagery from Giddings Road and dated September 2022 shows the site as an empty field comprising of grassland with boundary hedgerows. The dwellings of the wider residential site (permitted under 1401659OUT and 18/00633/REM) have been erected on Bowland Close.

Street level imagery from Giddings Road and dated June 2023 shows the site as an empty field comprising of grassland with denser boundary hedgerows than in September 2022. The dwellings of the wider residential site (permitted under 1401659OUT and 18/00633/REM) remain erected on Bowland Close.

*Community Infrastructure Levy
A CIL Liability Notice by the LPA was issued to Linden Limited FAO: Miss Hannah Short on the 18th January 2022 to the sound of £85484.91

Before the commencement of the CIL-liable development a Commencement Notice should be submitted and received by the LPA. The submitted evidence shows an alleged commencement date of the 14th November 2024.

Letter from the LPA to Vistry Homes Ltd and dated the 11th Nov 2024 confirmed the LPA received a CIL Commencement Notice for the above CIL liable development from Mr Jack Gandy noting that the anticipated development commencement date is 12th November 2024. As such the LPA have received a commencement notice prior to the alleged commencement date.

*Building Control Applications.
One building control application has been received by the Local Authority ref 1400210DOMIN and dated the 05.03.2014 in relation to '80 residential units'.

No other Building Control applications on this site have been received by the Local Authority.

Implementation

In accordance with the outline permission (Condition 1) the development (Permitted Under Application Ref 19/01294/FUL) should have been implemented before the 19.11.2024, subject to the prior discharge of any pre-commencement conditions. The submitted application states material operations on the site were conducted by virtue of the laying of a surface water drainage pipe for the foundations of Plot 86 on the 14/Nov/2024. The accompanying application form states the application is accompanied with photos (dated the 14/Nov/2024) of the material operations.

Paragraph 4 of Section 56 of the TCPA (1990) states "material operation" means—
(a)any work of construction in the course of the erection of a building; [F9(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.

The applicants claim they have materially commenced 19/01294/FUL as the accompanying date and time stamped photos demonstrate the laying of underground pipe for surface water drainage in the foundations of Plot 86.

As detailed in 'The application is supported with' section of this report, 9 photos accompany this application. The submitted photos are time and date stamped, show the alleged laying of underground pipe for surface water drainage in the foundations of Plot 86 and demonstrate this in the wider context of the site.

To ensure the drainage run was installed in the accurate location as per the approved plans the LPA asked the applicant to provide additional information. Submitted drawing Topographic survey Rev A and 9458-BHP-XX-XX-DR-C-4001 rev T3 received by the LPA 10/01/2025 provide coordinates and topographical data for the implemented pipework.

Officers have cross refenced the submitted survey data and the approved drainage strategy drawing non 9458-BHP-XX-XX-DR-C-0310. The separation distance from the levels point (+16.98) from the top of the run (north) is approximately 14.4 meters and from the bottom of the run (south) is approximately 13.2 meters. Officers can confirm the drainage run north/south is accurate.

Given the above and the evidence before the LPA, the application satisfies the "on the balance of probability" requirement, such that a material operation on the site was undertaken before the expiration of the planning permission 19/01294/FUL on the 14/Nov/2024 at Land East Of Glebe Farm, Gidding Road, Sawtry.

Pre-commencement condition discharge
The accompanying covering letter claims "there are no conditions left to be discharged and that the development was in a position to lawfully commence development before the 19th November." Accompanying evidence from the applicant claims that a material commencement on site has taken place on the 14/Nov/2024. As such, any pre-commencement conditions that would need to have been discharged, prior to a material start on any part of the site.

Permission 19/01294/FUL has fourteen conditions, one of which is a pre-commencement, and this would require discharging prior to the applicant's claimed material start date of 14/Nov/2024.

The condition required by the permission 19/01294/FUL to be discharged prior to the commencement of development have been considered under the following applications:
-Condition 11 (Foul Water Drainage)- Application ref 24/80243/COND-Discharge of Condition 9 (surface water details), 10 (surface water management) and 11 (Foul water only) for 19/01294/FUL-Conditions Discharged-20.08.2024.

As such pre-commencement details of the foul water drainage was submitted and approved prior to the applicant's claimed material start date of 14/Nov/2024.

The application and planning history also indicates Conditions 5 (Cycle And Bin Storage), 6 (Parking), 8 (Levels), Condition 9 (Surface Water Details) and 10 (Surface Water Management) appended to 19/01294/FUL have also been discharged prior to the applicant's claimed material start date of 14/Nov/2024.

Conclusion:
On the basis that the Local Authority has no new evidence to make the applicant's version of events less than probable; the information provided and available to the Local Planning Authority is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.

The evidence submitted with this application has, on the balance of probability, demonstrated that planning permission reference 19/01294/FUL was implemented on site and works commenced before planning permission reference 19/01294/FUL expired. Therefore, planning reference 19/01294/FUL remains extant and continued development in line with this permission is therefore considered to be lawful and is immune from enforcement action.

It is therefore recommended that the Certificate is approved for the lawful existing development of the six dwellings within the red line map attached.

If you would like a translation of this document, a large text version or an audio version, please contact us on 01480 388388 and we will try to accommodate your needs.

**CONTACT OFFICER:**
Enquiries about this report to **Charlotte Dew**