HUNTINGDONSHIRE DISTRICT COUNCIL

25/00385/CLED

OFFICER REPORT

Case No: **25/00385/CLED** **Certificate of existing lawful use**

Proposal: **Lawful implementation of planning permission reference 18/02726/FUL dated 22 April 2022**

Location: **Former Car Showroom London Road St Ives**

Applicant: **Ms Sarah Ballantyne-Way**

Grid Ref: **531073 270731**

DESCRIPTION OF SITE AND APPLICATION

This application is for a Lawful Development Certificate which seeks to confirm the lawful implementation of planning permission reference 18/02726/FUL.

The supporting information consists of:

- Covering Letter dated 28th February 2025
- Location Plan - 111607-LOC-05
- Setting Out Survey - ENC_3859_ASO
- Letter dated 11th March 2025 containing photographs of the footing trench for Plot 41 filled with concrete

The application was submitted and made valid on 3rd March 2025.

RELEVANT PLANNING HISTORY

25/80087/COND - Discharge of condition 36 (Archaeology) of 18/02726/FUL - Pending consideration

25/80054/COND - Discharge of Condition 36 (Archaeology) for 18/02726/FUL - Approved

25/00250/NMA - Non-material amendment of 24/01950/S73 to amend the description of development as follows: Variation of conditions 2 and 5 to allow for 13 plots on site to meet the requirements of Part M4(2) of the Building Regulations - Approved

24/01950/S73 - Variation of conditions 2 and 5 to allow for 11 plots on site to meet the requirements of Part M4(2) of the Building Regulations for application 18/02726/FUL - Approved

24/80211/COND - Discharge of Conditions 24 (Foul Drainage), 25 (Surface Water Drainage), 40 (Levels) and 42 (Flood Mitigation Measures) for 18/02726/FUL - Refused

23/80076/COND - Conditional Information for 18/02726/FUL: C28 (contamination)

22/80388/COND - Discharge of Condition 30 (Bat Survey) and 36 (Archaeology) for 18/02726/FUL - partial discharge (condition 30 discharged, condition 36 refused)

22/01738/NMA - Non Material Amendment of 18/02726/FUL to amend conditions 31 and 33 - Approved

22/80193/COND - Conditional Information for 18/02726/FUL: C28 (Contamination)

18/02726/FUL - Phased residential development of 49 dwellings with access, parking, landscaping and associated works - Approved

17/00153/CLED - Use of land and buildings for car sales, servicing, repair and storage - Withdrawn

16/01529/FUL - Demolition of vacant existing buildings: (1)Former car showroom building; (2) Workshop building; (3) Materials storage building; and (4) General storage building. Approved September 2016.

LEGISLATION

Section 56 (2) of the Town and Country Planning Act 1990: Time when development begun
Section 191 of the Town and Country Planning Act 1990: Certificate of lawfulness of existing use or development

SUMMARY OF ISSUES

A Local Planning Authority can grant a certificate confirming that an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990 (the Act). If the Local Planning Authority is satisfied that the appropriate legal tests have been met, it will grant a Lawful Development Certificate. Where an application has been made under Section 191, the statement in a Lawful Development Certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

The statutory framework covering "lawfulness" for lawful development certificates is set out in 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.

The Planning Practice Guide section on Lawful Development Certificates advises that applications must be accompanied by sufficient factual information/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 a certificate.

In the case of applications for existing use, if a Local Planning Authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
To be successful the applicant is required to demonstrate that operational development pursuant to the implementation of 18/02726/FUL took place before the permission expired.

Permission 18/02726/FUL has 43 conditions attached to it. Condition 1 states that the development shall be begun before the expiration of three years from the date of this permission. Planning permission was granted on 22.04.2022 and therefore development should begin on or before 22.04.2025.

ASSESSMENT

The LPA must assess:

1. That the development is considered to be a 'material operation' under Section 56 of the Act;
2. If the development was begun before 22.04.2025

<u>Prior to Commencement condition discharge</u>

To undertake a material operation, the applicant must first discharge any prior to commencement conditions to allow for a start to be made. In this case, conditions 30 (bat surveys) and 36 (archaeology) have triggers requiring the submission and approval of details prior to any

development commencing. Furthermore, condition 28 (contamination) requires submission and approval post demolition.

Planning Reference	***Description***	***Decision Date (Approved)***
Pre-commencement Conditions		
22/80388/COND	Condition 30: Bat Surveys	Discharged 8 February 2023
22/80388/COND	Condition 36: Archaeology	Not discharged
25/80054/COND	Condition 36: Archaeology	Part discharged 16 April 2025
25/80087/COND	Condition 36: Archaeology	Pending consideration
Post Demolition Condition		
23/80076/COND	Condition 28: Contamination	Partial Discharge (part C implementation of remediation scheme is outstanding)

As set out above, condition 30 (bat surveys) has been discharged in full. Under discharge of condition application 25/80054/COND, condition 36 (archaeology) has been discharged for the rear part of the site as no further archaeological work is required in this area. The decision for 25/80054/COND states:
The submitted WSI is acceptable for the initial stage of archaeological works and there is no requirement for archaeological work on the part of the site edged in blue on Figure 2 and 3. As such, the requirements of the condition have been met for the area edged in blue only and Condition 36 can be discharged in so far as it relates to this area and development may commence within this area subject to compliance with other conditions. The full condition wording remains for the part of the site edged in orange on Figure 2 and 3 in accordance with the recommendation by Historic Environment Team (CCC) and no development as otherwise approved under 18/02726/FUL shall commence in that area.

The Written Scheme of Investigation (WSI) was agreed with CCC Historic Environment Team prior to the decision issued 25/80054/COND. The WSI proposed a 2m by 0.5m test pit excavated in the southern area of the site to assess the level of disturbance and potential for the survival of archaeological remains in this area and to accommodate a footing trench (paragraph 1.7 of the WSI). Based on the information submitted with this application, the test pit was excavated on 25th February 2025 and no archaeological remains or deposits were identified, and the trench was signed off by with CCC Historic Environment Team and backfilled. Figure 3 and 4 show the excavation and backfilling of the test pit.

Following this, the footing trench for Plot 41 to be excavated was marked out ahead of excavation by surveyors in accordance with the submitted Setting Out Survey (drawing ENC_3859_ASO). The foundation trench was excavated (see pegs 60 - 61 on plan 2) on 25th February 2025 and filled with concrete to form a partial foundation for Plot 41.

The partial foundation trench for plot 41 was carried out prior to the decision being issued on 25/80054/COND for condition 36. The 'Whitley principle' has been considered in this respect (FG Whitley & Sons Co Ltd v Secretary of State for Wales [1992] 64 p. & C.R 296) (Appeal Ref. APP/K5600/W/17/3168385). The Whitley principle is essentially that a permission is controlled by, and subject to, its conditions and therefore operations carried out in contravention of conditions cannot properly be described as commencing the development authorised by the permission. However, there are certain exceptions to this as established in case law, one of which is explained in paragraph 13 of the aforementioned appeal decision which states the following: "The one relevant to this case being that if a condition requires an approval before a given date, but the developer has applied before that date for approval, and that approval is subsequently given so

that no enforcement action can be taken, work done before the deadline and in accordance with the scheme ultimately approved can amount to a start to development. It does not matter if the subsequent approval was given after the deadline".

It is noted that condition 36 has not been fully discharged (as further archaeological work is required for the front part of the site), however the foundation for plot 41 is on the part of the site where no further archaeological work is required. As such, the foundation excavation carried out for Plot 41 was not in contravention of (and therefore accorded with) the approval later given under 25/80054/COND. Having regard to the Whitley principle, the applicant applied to discharge condition 36 (a pre-commencement condition) on 19.02.2025 prior to the permission expiring (22.04.2025) and the foundation excavation carried out for Plot 41 was not in contravention of (and therefore accorded with) the approvals given under 25/80054/COND on 16.04.2025.

Material Operation

Section 56(2) of the Town and Country Planning Act 1990 states that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Sub-section 4 confirms that the following constitute a material operation for the purposes of Sub-section 2:

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 trench as 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 that constitutes material development.

As set out in the submitted Covering Letter dated 28th February 2025, a foundation trench for Plot 41 was excavated on 25th February 2025. Photographic evidence has been provided of 'setting out' of site prior to exaction (Figure 1 and 2), excavation of the trench/trail pit (Figure 3) and backfilling of the trench/trail pit (Figure 4). A subsequent letter dated 11th March 2025 includes photographs of the trench being filled with concrete for part of the foundations for Plot 41. The submitted Setting Out Survey (drawing no. ENC_3859_ASO) shows the location of the setting out pegs and the location of the partial footing for plot 41. The digging of a trench which is to contain part of the foundations is listed above and is considered to constitute a material operation. Based on the above, it is considered that a material operation was carried out prior to the expiration of the permission.

CONCLUSION

On the basis that the Local Planning Authority has no 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 a material operation has been carried out with the digging of a trench to contain part of the foundation for plot 41, such that permission 18/02726/FUL has been implemented and remains extant. A certificate of lawfulness can be issued accordingly.

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CONTACT OFFICER:

Enquiries about this report to **Lucy Pateman**