HUNTINGDONSHIRE DISTRICT COUNCIL

25/01060/CLED

OFFICER REPORT

Case No: **25/01060/CLED** **Certificate of existing lawful use**

Proposal: **Certificate of lawful use for the erection of barn, stable and dwelling**

Location: **Beaconfield House London Road Godmanchester**

Applicant: **Mr Nick D'Agati**

Grid Ref: **525953 268054**

DESCRIPTION OF SITE AND APPLICATION

This application is seeking a Lawful Development Certificate for the use for the erection barn, stable and dwelling. The application site is in an isolated rural location to the south of Godmanchester village.

The grounds for this application are based on the assertion that the dwelling and buildings known as Beaconfield, London Road, Godmanchester Cambs PE29 2LJ, were not constructed according to plans approved under planning permission, reference 87/1416FUL. The planning permission has a Section 52 legal agreement attached to it to ensure that the occupant of the dwelling was employed either in agriculture or in connection with the equine centre established on the land. It is argued by the applicant that the tie on the dwelling is not valid and that therefore the dwelling has no occupancy conditions.

RELEVANT PLANNING HISTORY

8701416FUL - Erection of farm building, Equine centre and associated dwelling – permission granted 25.05.1988
94/00692/FUL - Erection of 1 pair semi-detached dwellings – Refused 19.12.1994
96/00851/FUL - The stationing of a caravan – permission granted 01.10.1996

CONSULTATIONS

There is no statutory requirement to consult third parties including Town Councils or neighbours. It may, however, be reasonable for a LPA to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. In this case it was considered reasonable to consult Godmanchester Parish Council. In this instance they have responded acknowledging that they consider this matter to be a legal matter rather than a planning matter and therefore feel unqualified to comment further.

REPRESENTATIONS

No representations have been received at the time of determination.

SUMMARY OF ISSUES

The applicant is asserting that the planning permission to which the S52 agreement relates to was not lawfully implemented and therefore the obligations in the S52 agreement were not triggered and cannot be binding.

Planning History Information:

History for the site confirms that the development granted under permission 8701416FUL was built out. Plans submitted by the applicant show that the dwelling is constructed approximately 1.4 metres east of the approved plan without the office to the rear. The equine centre is in the correct location but is larger than approved, with an increased depth of approximately 7 metres. The barn is positioned approximately 8 metres further north than the approved location.

Evidence submitted by the applicant:

*Planning Statement
*Appendix 1 – Decision Notice for 8701416FUL
*Appendix 2 – Site Plan
*Appendix 3 – Location Plan
*Appendix 4 – Overlay of plans and aerial view overlay 1:500
*Appendix 4.1 – Overlay of plans 1:200
*Appendix 4.2 – Brief - dated 6th June 2025

The assertion made by the applicant is based on 4 factors:

1. The site layout is completely different to that approved. The stables have been constructed approximately 8.4m to the North of the approved plan. The house has been constructed approximately 1.4m to the East of the approved plan.
2. The area of curtilage to the dwelling varies with substantial areas falling outside of the approved curtilage (including the southern section of the pond).
3. The barn was built larger than that permitted.
4. The office on the rear of the dwelling was never built.

ASSESSEMENT

Officers have reviewed the submitted evidence, examined historical documents and sought legal advice on the matter. Aerial photographs have been viewed to determine that the proposal has been built out and in line with the plans submitted by the applicant. Historical applications related to the application site held by the Local Planning Authority has confirmed that the latest application was submitted in 1996 and is unrelated to the dwelling. There is no ongoing enforcement action associated with the site.

It is clear that development was carried out at the property and that this development was materially, though not entirely, in accordance with the plans which were approved. The relevant condition is:

2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans and specifications.

Reason: For the avoidance of doubt.

Whilst the wording states, “in complete accordance”, the reason for this condition is stated as, “for the avoidance of doubt”. On comparison of the plans in the planning statement, the intention seems to have been to implement that permission albeit there is slight difference in the detail.

It is noted that the application site is of a generous size, within the open countryside and with no immediate neighbours. Therefore, the repositioning of the buildings and the increase in size of the barn, are not considered to have a significant impact within the site.

The residential curtilage from the original approved plans shows an angled rectangular plan. The aerial images show a more defined space to the rear of the property, flush with the menage. The amenity space is broadly in the same area with the advantage that the approved access path no longer runs along the perimeter. The residential space is considered to be within the correct area when assessing the site layout as a whole and as such the changes are not considered to be materially relevant and are de-minimis.

It is noted that the original site plan shows the accessway to and from the site positioned to the north-east of the site. The aerial photography shows the main accessway to be in the correct position, with a more direct route between the buildings on site. The original route around the dwelling and to the rear of the stables do not appear to have been implemented. However, it is considered that the reduction of the hardstanding does not constitute a significant change as the main accessway to and from the site is maintained. Therefore, in the context of the site, the change of access routes within the site are considered to be de-minimis.

The repositioning of the dwelling has no material impact within the site; it is still closely related to the other buildings within the site and the relationship with them is maintained.

The fact that the office has not been built is not a factor in classing the development as materially different to the plans. The applicant does not have to build out everything that has been approved, and the Local Planning Authority cannot force them to complete, so failure to build does not automatically mean the application is materially different from that approved permission. The office is a small addition to the rear of the dwelling and therefore its omission is considered to be de-minimis.

Therefore, as a whole and in the context of the location and size of the application site, the changes are considered to be de-minimis.

Differences between the approved plans and the operations are not necessarily fatal to the ability of the operations to commence the development. It is necessary to consider the significance of the differences (Commercial Land Ltd/Imperial Resources SA v Secretary of State for Transport, Local Government and the Regions [2003]). This case provides that any differences between the approved plans and the operations relied upon to show implementation do not prevent operations having commenced. The significance of the differences is relevant and should amount to a functional difference. In this case, the development is largely as permitted albeit the buildings are in a slightly different position and size. This potentially amounts to a breach of condition in that the buildings were not constructed entirely in accordance with the approved plans. However, it does not mean that the implementation was not lawful. Further, the applicant has not provided details of the implementation of the permission so cannot demonstrate that, for example, the construction of the stables in a different location to that permitted was the material operation that implemented the permission.

CONCLUSION

The application is submitted under Section 191 of the Town and Country Planning Act, as amended. It seeks to demonstrate that the Section 52 legal agreement attached to the planning permission for the erection of the barn, stable and dwelling, which states that the occupant of the dwelling was employed either in agriculture or in connection with the equine centre established on the land, is not valid and that therefore the dwelling has no occupancy conditions.

Based on the evidence submitted and available to the Local Planning Authority, it is considered that the development is materially in accordance with the approved plans. It is clear that the intention has been to implement the permission, despite the differences in detail and therefore the occupancy condition stated within the Section 52 Agreement remains valid. For that reason, it is not recommended that a certificate is granted for the removal of the Section 52 occupancy condition.

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CONTACT OFFICER:
Enquiries about this report to **Olivia Manton**