HUNTINGDONSHIRE DISTRICT COUNCIL

24/01878/CLED

OFFICER REPORT

Case No: **24/01878/CLED** **Certificate of existing lawful use**

Proposal: **Lawful Development Certificate (Existing) for erection of dwellings.**

Location: **Vernon Motors Warboys Road Pidley**

Applicant: **Mr Roger Paget**

Grid Ref: **533105 277953**

DESCRIPTION OF SITE AND APPLICATION

The application is for a Certificate of Existing Use to confirm development of 4 residential dwellings commenced prior to the expiration of the planning permission 19/01782/OUT and 21/01287/REM at Vernon Motors, Warboys Road, Pidley. The application site which covers an area of approximately 0.36 hectares, is located on the site of the former Vernons Motors on the eastern edge of Pidley and off the B1040. The site does not lie within or adjacent to a Conservation Area and there are no other designated heritage assets. The site is located in flood zone 1.

The applicant seeks to establish that development commenced, by virtue of the demolition of the former Vernon Motors buildings and layout of the roads and trenches, prior to the expiration of 19/01782/OUT.

19/01782/OUT expiration was set at two years from the date of approval of the last of the reserved matters. The last reserved matters application received by the LPA was 21/01287/REM and was determined the 22.07.2022. Therefore, the applicants seek to establish that development commenced prior to 19/01782/OUT expiring on the 22.07.2024.

The supporting information consists of:
*Application form - received by the Local Planning Authority on 10th October 2024

*Copy of email from County Archologist dated the 11th July 2024 - received by the Local Planning Authority on 10th October 2024

*Condition Summary - received by the Local Planning Authority on 10th October 2024.
-This informs the LPA which conditions associated with the outline and reserved matters applications have been approved, requires submission or is a compliance condition.
-This schedule does not inform the LPA of what condition approvals are associated with each approved condition.

*Land ownership notice served - received by the Local Planning Authority on 10th October 2024

*Decision notice 24/80089/COND - received by the Local Planning Authority on 10th October 2024

*Location Plan drawing non 1250 rev A - received by the Local Planning Authority on 10th October 2024

*Appendix A - photos of site works underway 10th April 2024 - received by the Local Planning Authority on 10th October 2024

- Photo 1 shows a pile of rubble on the existing hard standing. Photo 2 shows a digger undertaking some form of site clearance of soil. The 3rd photo shows a digger undertaking trenchwork on the site. Photo 4 shows two piles of rubble in the foreground and a digger in the background in the alleged location of the roadway construction. The 5th and 6th photo shows trenchwork on site for archaeology.
- Submitted photos are not date, time and location stamped and therefore Officers are unable to verify the accuracy of photos.

*Appendix A- Laying out the road to site photos 10th April 2024 - received by the Local Planning Authority on 10th October 2024
- Photo 1 shows a digger in the background and the installation of kerbing in the foreground. Photo 2 show a pile of kerb edgings. Photos 3 and 4 show the new kerbing installed at the site access. Photo 5 shows a digger completing a form of ground clearance. Photo 6 shows two individuals laying kerbing. Photos 7 and 8 show the installed kerbing between the existing houses.
- Submitted photos are not date, time and location stamped and therefore Officers are unable to verify the accuracy of photos.

*Appendix B -Demolition photos - received by the Local Planning Authority on 10th October 2024
- Photos 1 and 2 show a scissor lift being used to remove cladding off a steel frame structure. Photo 3 shows cladding located in a container. Photo 4 shows a steel frame structure with roof cladding. Photo 5 shows a pile of rubble. Photo 6 is a view from within a steel frame structure. Photo 7 shows a dismantled steel frame structure. Photos 8 and 9 show a digger distributing material into a pickup truck. Photo 10 shows a dismantled steel frame structure.
- Submitted photos are not date, time and location stamped and therefore Officers are unable to verify the accuracy of photos.

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 56 of the Town and Country Planning Act 1990: Time when development begun
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

19/01782/OUT- Erection of up to six dwellings -Permitted 06.03.2020

21/01287/REM- Application for approval of reserved matters (Access, Appearance, Landscaping, Layout, Scale), following outline approval reference 19/01782/OUT, for the erection of 4 dwellings.-Approved 22.07.2022

20/80312/COND- Conditional Information for 19/01782/OUT: C3 (Details reserved (all reserved)), C6 (Provision of parking/turning cycle space), C7 (Levels)-Withdrawn 26.11.2020

21/80125/COND- Conditional information for 19/01782/OUT: C3 (Details Reserved (All Reserved)), C6 (Provision of Parking/Turning Cycle Space), C7 (Levels), C13 (Protect of Trees/Hedges during work)-Refused 09.06.2023

23/80450/COND- Discharge of Conditions 7 (levels) and 9 (contaminated land) of 19/01782/OUT-Dischared-19.01.2024

24/80089/COND- Discharge of Condition 4 (Foul and surface water drainage) of 19/01782/OUT.- Details Acceptable Not discharged 30.05.2024

24/80213/COND- Discharge of Condition 4 (Foul and surface water drainage) and 8 (Investigation archaeology programme) of 19/01782/OUT.- Not yet determined

CONSULTATIONS

Pidley Parish Council-The Parish would like to see the dwellings built and progressed because for the residents in close proximity this site has been a building site for quite some time now.

REPRESENTATIONS

None received at time of determination.

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 19/01782/OUT and reserved matters consent 21/01287/REM, relating to the development of four residential dwellings, has commenced prior to the expiration of permission on the 22.07.2024. 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

13 conditions were imposed on permission 19/01782/OUT of which Condition 1 states 'The development hereby permitted shall be begun before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.' Condition 5 repeats this by stating 'The development hereby permitted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.'

Condition 3 (of 19/01782/OUT) states 'Approval of the details of the access; appearance; landscaping; layout; and scale (hereinafter called the "reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.'

Only one Reserved Matters Application was received by the Local Authority application 21/01287/REM. Access Appearance, Landscaping, Layout and Scale reserved matters details (under application ref 21/01287/REM) were approved the 22.07.2022.

Permission on the site is bound to the statutory time limitations imposed on its outline permission, 19/01782/OUT in accordance with section 92 of the Town & Country Planning Act 1990. In accordance with the outline permission (Condition 1 and 5) the development should have commenced on and or before the 22.07.2024, subject to the prior discharge of any pre-commencement conditions.

Information available to the Local Planning Authority

*Aerial and Street level Imagery

Aerial imagery dated the 8th of September 2021 shows the Vernon Motors buildings still in place on the application site. More recent aerial imagery is not available to the LPA.

Street level imagery dated September 2011 shows the Vernon Motors buildings, associated access and two green spaces at each side of the access. Kerbs are located at the bell mouth junction.

Street level imagery dated May 2021 shows the steel frame of one of the former Vernon Motors buildings to have been demolished. One building remains erected. A pile of rubble is located on the site. Two dwellings have been erected on the green spaces either side of the access, these were subject to an alternate planning application. The access to the site is shown to have kerbing beyond the bell mouth junction. The kerbing appears to have little to no vegetation growing around it.

Street level imagery dated September 2021 show that the steel frame of one of the former Vernon Motors buildings has been removed. One building remains erected. The pile of rubble located on the site remains. Vegetation growing along the kerbing appears to have grown significantly.

Street level imagery dated July 2022 shows the site in the same context as the imagery dated September 2021.

Street level imagery dated May 2022 shows the site in the same context as the imagery dated September 2021.

These images do not show what has occurred within the site during this timeframe beyond what can be seen from the public highway B1040.

*Community Infrastructure Levy
A CIL Liability Notice was issued by the LPA to Qualitec Limited FAO: Mr Roger Paget on the 12th August 2022 for £10,284.05.

Before the commencement of the CIL-liable development a Commencement Notice should be submitted and received by the LPA. The LPA have not received a commencement notice prior to the alleged commencement date or in fact at all.

*Building Control Applications.
One building control application has been received by the Local Authority ref 1500442DEXIN and dated the 05.05.2015 in relation to '2 New build residential plots and 1 non-exempt building'.

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

Implementation
In accordance with the outline permission (Conditions 1 and 5) the development should have been implemented on and or before the 22.07.2024, subject to the prior discharge of any pre-commencement conditions. The submitted application states material operations on the site were conducted by virtue of demolition, the laying out of a road and trenching prior to the 22.07.2024. The accompanying application form states the application is accompanied with photos of the material operations and dated the 10 April 2024.

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 application is accompanied by photos demonstrating demolition has taken place on site. The photos are not date/time stamped nor does the applicant confirm when exactly the demolition took place.

The development description of permission 19/01782/OUT (Erection of up to six dwellings), officer report and the conditions imposed do not refer to the demolition of the former Vernon Motors buildings to facilitate the development permitted.

Evidence before the LPA also includes an email from the applicant's agent to a HDC enforcement officer dated the 17th Nov 2023 (11.01am) which states that "Our Clients inform us that the matter of demolition was discussed with your Planning Officer at a site meeting during the planning application. It was established and agreed that the demolition of farm agricultural buildings was permitted under the Town and Country Planning Act without planning approval." In this case the applicants agreed that demolition did not constitute the development permitted under permission 19/01782/OUT and associated details 21/01287/REM.
Planning History on the site also details a withdrawn demolition determination application (application ref 20/02350/DEMDET). An email to the case officer (Laura Pearson) dated 28.05.2021 states "We confirm that we wish to withdraw the demolition of building application ref

20/02350/DEMDET. The steel A-frames are still standing but the bulk of the demolition has taken place."

The evidence before the LPA in regard to the applicants claim that demolition is a 'material operation' (Section 56(4) (aa)) is therefore ambiguous and contrary for the reasons above.

The application is accompanied by several documents with site clearance, roadway and archaeological work photos undertaken on the site. These photos are not date or time stamped. However, the submitted application form states these works were undertaken on the 10th April 2024.

It should also be noted that archaeological trenching is not considered a "material operation" by the definitions stated in Paragraph 4 of Section 56 of the TCPA (1990).

The evidence before the LPA in regard to the laying out or constructing a road as a material operation (Section 56(4) (d)) is also insufficient and ambiguous.

Given the above and the evidence before the LPA, this does not satisfy the "on the balance of probability" requirement, such that a material operation on the site was undertaken before the expiration of the planning permission 19/01782/OUT and 21/01287/REM on the 22.07.2024 at Vernon Motors, Warboys Road, Pidley.

Pre-commencement condition discharge

The accompanying application form claims "All conditions and reserved matters have been approved prior to the date of 22 July 2024, except the conditions of drainage and archaeology." Accompanying evidence from the applicant claims that a material commencement on site has taken place on the 10th April 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 21/01287/REM has fifteen conditions, one of which is a pre-commencement, and the permission remains bound by the outline conditions of 19/01782/OUT whereby, five of the thirteen conditions are pre-commencement conditions and subsequently these would require discharging prior to the applicant's claimed material start date of 10th April 2024.

The conditions required by the outline permission 19/01782/OUT to be discharged prior to the commencement of development have been considered under the following applications:

o Condition 3 (Reserved Matters)- An application for the access; appearance; landscaping; layout; and scale reserved matters details was received by the LPA on the 29.07.2021 and approved the 22.07.2022.

o Condition 4 (Surface and foul water)-Condition details deemed acceptable but not discharged under application referenced 24/80089/COND on the 30.05.2024. The submitted details were deemed acceptable but not discharged as Officers thought development on the site had already commenced on the site and the condition was a pre-commencement condition. No site visit was undertaken as part of the application.

The LPA acknowledge they were at fault when they determined this discharge of condition application. The application was determined acceptable but not discharged due to ongoing discussion with the applicant regarding the commencement on site. Irrespective of this issue, condition 8, a condition which goes to the heart of the permission, remains undischarged. This is discussed in a later section of this report.

A secondary application (Application ref 24/80213/COND) to discharge the condition details is still to be determined as the LPA consider permission on the site to has lapsed.

o Condition 7 (Site Levels) - Submitted and approved details under application referenced 23/80450/COND on the 19.01.2024.

o Condition 8 (Written Scheme of Investigation) - Application ref 24/80213/COND condition details are still to be determined as the LPA consider permission on the site to has lapsed. Application ref 24/80213/COND was submitted and validated by the LPA on the 20.06.2024.

Officers do note the accompanying evidence from the County Archaeologist and agree the submitted details have been considered acceptable by the County Archaeologist on the 11.07.2024. However, the application for the discharge of the archaeology outline pre-commencement condition was submitted after the suggested material start date.

Officers note the claim made by the applicant that drainage and archaeology conditions "are approved but were not formally discharged before the deadline of 22 July 2024". This claim is however disputed as planning history on the site only notes one discharge of condition application received by the LPA to discharge condition 8 (Written Scheme of Investigation) was 24/80213/COND.

The wording of Condition 8 (Written Scheme of Investigation) is as follows "No development shall take place within the area indicated until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority."

o Condition 9 (Contaminated Land)- Submitted and approved details under application referenced 23/80450/COND on the 19.01.2024.

The conditions required by the reserved matters permission 21/01287/REM to be discharged prior to the commencement of development have been discharged under the following applications:
o Condition 2 (Materials)- Application ref 24/80320/COND received by the LPA but returned to the applicant as LPA consider permission on the site to have lapsed.

Other various applications in relation to the discharge of conditions for 19/01782/OUT have been received by the LPA and determined:
o 20/80312/COND-Conditional Information for 19/01782/OUT: C3 (Details reserved (all reserved)), C6 (Provision of parking/turning cycle space), C7 (Levels)- Withdrawn.
Email from agent dated the 24th Nov 2024 states "We wish to withdraw the application as there is a question over the site boundary."
o 21/80125/COND-Conditional information for 19/01782/OUT: C3 (Details Reserved (All Reserved)), C6 (Provision of Parking/Turning Cycle Space), C7 (Levels), C13 (Protect of Trees/Hedges during work)-Refused. Conditions 3 and 6 are compliance conditions. No level information was submitted with this application, consequently the condition 7 was not discharged.

Planning history indicates pre-commencement conditions were imposed on the outline permission 19/01782/OUT for the erection of four dwellings which have not been submitted or formally discharged by the LPA prior to the applicant's alleged material start date of 10th April 2024. These relate to Condition 8 (Written Scheme of Investigation) of 19/01782/OUT and Condition 2 (Materials) of 21/01287/REM.

In Meisels and Anor v Secretary of State for Housing, Communities and Local Government [2019] EWHC 1987 (Admin) it was held that where a pre-commencement condition is considered to go to the heart of the permission, any commencement without discharge of the pre- commencement condition would be unlawful. In this case the Local Planning Authority considers some of the undischarged pre-commencement conditions namely conditions 8 (Written Scheme of Investigation) do go to the heart of the permission 19/01782/OUT. The reasons for imposing the conditions are given in the permission. The Local Planning Authority considers undischarged pre-commencement conditions go to the heart of planning permission 19/01782/OUT and as such

any implementation of the planning permission without the discharge of all the imposed conditions would constitute unlawful development.

Conclusion:

On the basis of the legal position relative to pre-commencement conditions going to the heart of a permission (Meisels), it is considered the evidence provided with the application does not satisfy the "on the balance of probability" requirement, such that the outstanding pre-commencement condition 8 remains to be discharged and any development for the construction of the four dwellings would constitute unlawful development. It is also considered that insufficient evidence has been submitted to demonstrate a material operation on the site occurred on the applicant's claimed material start date of 10th April 2024, prior to outline permission (application ref 19/01782/OUT) lapsing on the 22.07.2024. In this instance, the Local Planning Authority therefore refuse to grant a certificate of lawfulness for the following reasons:

1) the Planning history shows pre-commencement conditions, namely Conditions 8 which the Local Planning Authority considers (following the decision in Meisals) go to the heart of the outline permission i.e. 19/01782/OUT which has not been discharged prior to the applicant's claimed material start date of 10th April 2024. Therefore, any commencement of development for the four dwellings in the absence of the discharge of all of these conditions would constitute unlawful development; and
2) the submitted evidence is ambiguous and not sufficiently precise to demonstrate a 'material operation' for permissions 19/01782/OUT and 21/01287/REM have been implemented in line with the statutory time limits of section 92 of the Town and Country Planning Act 1990 due to the absence of date and time stamped photos.

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