OFFICER REPORT

Case No: 25/00256/CLED **Certificate of existing lawful use**

Proposal: Proposed agricultural store/workshop Class B

Location: Land Off Hollow Road Ramsey Forty Foot

Applicant: Mr Nicholas Tye

Grid Ref: 531351 287993

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 94/0178/FUL for the erection of an agricultural store /workshop, through the material operations has occurred at Land Off, Hollow Road, Ramsey Forty Foot and as such the permission remains 'live'.

The applicant seeks to establish that the development of an agricultural store /workshop (application 94/0178/FUL) materially commenced by virtue of laying foundations and constructing walls up to horizontal damp proof course. 8 conditions were imposed on decision 94/0178 of which conditions 2 and 3 seeking material and landscaping details were to be submitted to the Local Planning Authority (LPA) prior to commencement. Condition 1 of 94/0178 stated that 'the development to which the permission relates must be begun no later than the expiration of five years beginning with the date on with the permission is granted'. 94/0178 was permitted 16th Dec 1994 meaning the permission would have expired the 16th Dec 1999 if not implemented.

The application is supported with the following information and consists of:
*Application Form Received by the LPA 10/02/2025
*Policy Tick Sheet
*Planning Statement
*Biodiversity Checklist
*Validation Checklist
*Location and Block Plan 94:313/3 Rev B
*Details of Proposal Plan 94:313/1 Rev H
*Detailed Section and Plan 94:313/2 Rev B
*Updated Details and section plans 94:3131 Rev J
*Covering Letter dated 5th February 2025
*Photographs Figures 1-4 of the Planning Statement

-Figure 1: Titled "exposed walling at horizontal damp proof level (northern)". This image is a close-up image of a linear row of bricks at 1 or 2 levels high surrounded by overgrown shrubbery /planting. The linear row of bricks appears to have a cavity wall between them. The background shows hedging and trees and further afield agricultural fields.

-Figure 2: Titled "exposed walling at horizontal damp proof level (southern)". This image is a close-up image of a linear row of bricks at 1 or 2 levels high surrounded by very overgrown shrubbery /planting. It is difficult to see the full length of the row of bricks.

-Figure 3: Titled "exposed walling at horizontal damp proof level showing back wall (eastern)". In the foreground of the photo is brick blockwork in two linear rows forming a corner of a building. The row of bricks at 1 or 2 levels high and are surrounded by very overgrown shrubbery /planting. In the background are several trees.

-Figure 4: Titled "exposed foundations formed in accordance with approved drawing 94:313/2 reb B." This close-up image displays a trench and the building foundations below the surface of ground level. When the photo was captured, the depth of the foundation is being measured.

*Decision Notice 94/0178

Information available to the Local Planning Authority (LPA):
*Planning History of the site and any associated communication
*Aerial and Street level Imagery
*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

9401078FUL- Erection of Agricultural store/workshop.-Permitted 16.12.1994

7500338OUT- Erection Of Agricultural Repair Shop-Refused 20.10.1975

7400271FUL- Agricultural Building -Permitted 01.07.1974

CONSULTATIONS

Parish Council- No comment at the time of determination.

REPRESENTATIONS

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.

SUMMARY OF ISSUES

Relevant parts of the Town and Country Planning Act 1990 are as follows:

The Local Planning Authority (LPA) can grant a certificate confirming whether 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. If the LPA 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.

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.

An LPA 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 94/0178/FUL, relating to the development of an agricultural store/workshop, commenced in accordance with the conditions imposed on planning permission 94/0178/FUL and so bit it the permission remains extant or in other words 'live'.

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
Eight conditions were imposed on decision 94/0178. Condition 1 of 94/0178 states that 'the development to which the permission relates must be begun no later than the expiration of five years beginning with the date on with the permission is granted'.

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 16th Dec 1999, subject to the prior discharge of any pre-commencement conditions.

Information available to the Local Planning Authority
*Building Control Applications
One building control application has been received by the Local Authority ref P950469 on the 03.05.95 and approved on the 27.07.95 in relation to 'proposed agricultural store/workshop' at Land Off Hollow Lane, Ramsey Forty Foot. Details of the building control application is located in the Councils paper archive.

The archive data in respect of the building control application includes an inspection record. The record details that:
-excavations were undertaken 19.09.97
-foundations constructed and blockwork begun 05.11.97
-no progress between 05.01.98 and 29.11.99

A Building Control Planning Consent Form (BCO62) was also located in the Council Building Control Archive for application P950469 and detailed that the following plan numbers had been approved as part of the planning/ building control application ref 94/0178:
- 94.313/3 rev B
- 94.313/1 rev B

Implementation
In accordance with the outline permission (Condition 1) the development (Permitted Under Application Ref 94/0178) should have been implemented before the 16.12.1999, subject to the prior

discharge of any pre-commencement conditions. The submitted application states material operations on the site have been conducted by virtue of the laying of foundations to horizontal damp proof level. The accompanying planning statement states the application is accompanied with photos of the material operation, the works obtained building regulations approval (application ref P95.0469) and commenced on site during July/August 1995 and inspected at relevant stages by Building Control under application referenced P95.0469.

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 94/0178 during July/August 1995 and that the building regulations approval referenced above would be able to confirm this. Historical records stored in the Councils archive found a Building Control Inspection Record for application referenced P95.0469. The record noted that excavations had been undertaken and inspected on the 19.09.97 and foundations had been constructed during an inspection on the 5.11.97.

The application is also accompanied by photographs (figures 1-4 of the submitted planning statement) of the claimed material operations of laying foundations and the construction of walls up to horizontal damp proofing. As detailed in preceding sections of this report, the submitted photos demonstrate foundations and walls built up to horizontal damp proof have been constructed for some time given the overgrown shrubbery in proximity to the erected walls.

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 94/0178 before the 16.12.1999 at Land Off, Hollow Road, Ramsey Forty Foot.

Pre-commencement condition discharge
Eight conditions were imposed on permission 94/0178. Of the eight conditions two of the conditions required the approval of the LPA prior to commencement.

Condition 2 of 94/0178 states 'Details of the type and colour of all materials to be used for the external surfaces of the building(s) shall be submitted to and approved by the Local Planning Authority before the commencement of the development to which this permission relates.'

Condition 3 of 94/0178 states 'Before any development is commenced on site, landscaping scheme shall be submitted to and approved by the Local Planning Authority. This scheme shall list the numbers, species and sizes of the trees and shrubs which are to be planted and to include a plan indicating the treatment of all ground surfaces, the materials to be used and the disposition of the various elements".

During the application, the applicants were asked to provide evidence of the discharge of the landscaping and material details. Given the application was undertaken over 30 years ago, the applicant did not hold a copy of the decision notices. However, the applicant claims the pre-commencement condition discharge application had been submitted and the case officer was Pat Parkin.

Officers viewed information available to the Council. The Council does not hold any digital copy of the discharge of condition application associated with permission 94/0178 on file or within the paper

archives. Due to insufficient information the application is ambiguous in nature in confirming pre commencement conditions had been implemented prior to commencement.

Notwithstanding this, a breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as failing to comply with any condition or limitation subject to which planning permission has been granted against which enforcement action may be taken. The time limits for taking enforcement action are set out in section 171B of the Town and Country Planning Act 1990 for which development becomes immune from enforcement if no action is taken within 10 years. In this case, the application ref 94/0178 was permitted 16th Dec 1994 and therefore, enforcement action against noncompliance with pre-commencement conditions is no longer enforceable. However, a lawful commencement without the discharge of pre commencement conditions is subject to consideration of The Meisels Judgment and the Whitley Principle.

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 the heart of the permission any commencement without discharge of the pre- commencement condition would be unlawful. The Council does not consider the pre-commencement conditions 2 (Materials) and 3 (Landscaping) to go to the heart of the permission given the application site is located in a rural area whereby agricultural building such as the permitted building are common within the locality and therefore would not appear as an anomalous feature within the landscape.

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 94/0178/FUL was implemented on site and works commenced before planning permission reference 94/0178/FUL expired. Therefore, planning reference 94/0178/FUL remains extant and continued development in line with this permission is therefore considered to be lawful and is immune from enforcement action.

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