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## **PLANNING STATEMENT**

**IN SUPPORT OF AN APPLICATION UNDER S192 OF THE PLANNING ACT**

**FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR THE PROPOSED  
ERECTION OF A DETACHED DWELLING TOGETHER WITH  
ASSOCIATED ACCESS ROAD**

**APPROVED UNDER PLANNING PERMISSION  
REF. 04/04275/STOUT AND 06/06970/STREM**

**ON PLOT 14, VANDON LODGE, HIGH STREET,  
HOOK, GOOLE, DN14 5NU**

**PREPARED ON BEHALF OF  
MR R D OLDRIDGE**

**JUNE 2021**

## **1.0 INTRODUCTION AND BACKGROUND**

- 1.1 This report has been produced in support of an application, made under section 192 of the Town and Country Planning Act 1990 (as amended), which seeks a Certificate of Lawfulness for the erection of a detached dwelling, which formed part of a lawfully implemented planning permission. It goes without saying that if the construction of one of the dwellings on this site would be lawful, then the completion of the remainder of the development would also be lawful.
- 1.2 Outline planning permission for a residential development, reference 04/04275/STOUT (**DOC1**), was granted subject to conditions on 12 November 2004. The only time limit condition imposed was for the submission of reserved matters within 3 years. Where no time limit is imposed, the standard time limit set out in legislation is relied upon. This would require that the development was commenced within 2 years of the last reserved matter being approved.
- 1.3 Reserved Matters Consent for 22 dwellings, reference 06/06970/STREM (**DOC2**) was granted subject to conditions on 27 September 2007. Accordingly, the time limit for commencing the development was 27 September 2009.
- 1.4 An application, reference 09/30055/CONDET (**DOC3**), to discharge the pre-commencement conditions relating to both the outline and reserved matters consents, was submitted to the council on 14 January 2009, long before the 27 September 2009 expiry date. Additional information in relation to that application was submitted in June 2009, also long before the expiry date. The discharge of condition application was granted in accordance with the details submitted in January and June 2009. For reasons unbeknown to the applicant, the council's decision letter was not issued until 23 April 2010. This was presumably due to staff shortages, work backlogs and other priorities.
- 1.5 Notwithstanding the fact that the council had not formally confirmed in writing that the pre-commencement conditions had been discharged, the applicant commenced operational development on the site prior to 27 September 2009 and in doing so lawfully implemented the planning permission.
- 1.6 The site has been on the market for many years but there has been little interest due to the development costs involved and the planning restrictions on the site. A local developer has recently expressed an interest in developing the site in accordance with the existing

planning permission, but is unwilling to commit to purchasing the site in the absence of a certificate from the council to confirm that the permission remains extant and can be lawfully built out.

- 1.7 It is important to bear in mind that this is not an application for planning permission and it should not be assessed against the development plan or any planning merits. It is also irrelevant, for the purposes of this application that the site is within a flood risk area. The decision to issue a Lawful Development Certificate should be based purely on matters of fact and law. These matters, as set out below, demonstrate that the proposed development would be lawful.

## 2.0 EVIDENCE

- 2.1 The burden of proof is on the applicant to provide sufficient evidence to demonstrate that on the balance of probability (it is more likely than not), the development proposed could be lawfully constructed under the existing extant planning permission.
- 2.2 In the case of *R (The Government of the Republic of France) v Royal Borough of Kensington and Chelsea* [2015] EWHC 3437 (Admin) it was established that an application could be made under S192 even though the answer to that question may depend on matters which could also have been dealt with under S191.
- 2.3 It is evident from **DOC3** that the details required by the pre-commencement conditions were submitted on 14 January 2009 and 26 June 2009. This was well within the time limit of the planning permission and details submitted were sufficient for the council to discharge the conditions. No further information was requested by the council after 26 June 2009, to enable them to discharge the conditions.
- 2.4 The following documents demonstrate that operational development commenced on site before the permission expired on 27 September 2009:

Document	Description
<b>DOC4</b>	Extracts from Archaeological watching brief providing written and photographic evidence that an Archaeologist was on site observing whilst the new access was being excavated on 29 <sup>th</sup> July 2009. This work constituted operational development prior to the expiry date of 27 September 2009.

<b>DOC5</b>	Invoice dated 12 September 2009 for the initial access works and kerbing. These operational works were undertaken prior to invoicing and prior to the expiry date of 27 September 2009, whilst the Archaeologist was on site (see DOC4).
<b>DOC6</b>	Photographs of the completed access works, which remain clearly visible on the site.
<b>DOC7</b>	Letter from East Riding of Yorkshire Council Monitoring Officer noting that works started on the development in 2009.

- 2.5 Following the lawful implementation of the permission, by excavating, laying out and kerbing the new access in July/August 2009, substantial demolition and asbestos removal works were undertaken in accordance with condition 4 of the outline permission. Evidence of the asbestos training, PPE, removal equipment and disposal is at **DOC8** and images of the site before and after site clearance can be found at **DOC9**. Whilst these works do not pre-date the 27 September 2009 they do demonstrate that operational works continued to take place beyond the initial access construction, in an effort to attract developers to the site. The demolition of the former piggery was included in the description of development. The extent of demolition and waste removal to date has been substantial and clearly forms part of the development of the site. The footings for part of plot 1 have also been completed and can be seen in photographs in DOC9.

### **3.0 ASSESSMENT**

- 3.1 Based upon the evidence available there is no doubt that planning permission was granted for the development proposed.
- 3.2 There is no doubt that all pre-commencement conditions were submitted to the council for approval well in advance of the expiry date and all of these conditions were discharged by the council (DOC3).
- 3.3 There is no doubt that operational development, namely the laying out of a new access, commenced on the site prior to the expiry date of the permission and in accordance with the approved plans and conditions. No enforcement action has ever been taken against these works.

- 3.4 The fact that the council did not discharge the conditions in a timely manner or before the operational development commenced, was out of the control of any other party. The retrospective approval of these conditions means that the permission remains valid. Otherwise the correct procedure would have been for the council to refuse the discharge of conditions application upon the expiry of the planning permission on the grounds that there was no longer a valid permission or any conditions pertaining to it, to discharge.
- 3.5 It was held in *Whitley & Sons v. Secretary of State for Wales and Clwyd County Council* (1992) 64 P. & C.R. 296 that it does not matter if development commenced prior to the approval of such matters, provided that the application for the necessary approvals was made before the permission would otherwise have expired if it had not been implemented. Furthermore, it does not matter that the actual approval of such details was issued after that date, provided that the works actually carried out do conform with the details as subsequently approved.
- 3.6 In this case the works carried out to implement the permission accord with the approved details and conditions.

#### **4.0 CONCLUSION**

- 4.1 All details required to discharge the pre-commencement conditions were submitted to the council prior to the expiry of the permission and all were approved.
- 4.2 The evidence provided in DOCS 4 and 5 is sufficiently precise and unambiguous to confirm that the development lawfully commenced prior to the expiry of the planning permission. The letter from the council (DOC7) whilst not specifying exactly when in 2009 the development was commenced, suggests that the council were notified that a start had been made and this adds weight to DOCS 4 and 5.
- 4.3 For the reasons outlined above it is considered that the correct application of planning law in this case should result in the granting of a Lawful Development Certificate for the proposed operational development.