

APPLICATION NO	PA/2014/0995
APPLICANT	Mr R Bassindale
DEVELOPMENT	Application for certificate of lawfulness for the implementation of planning permissions PA/2010/008 and PA/2011/0911, with a condition varied by application PA/2013/0874
LOCATION	Hillcrest, 33 High Street, Epworth
PARISH	EPWORTH
WARD	Axholme Central
CASE OFFICER	James Roberts
SUMMARY RECOMMENDATION	Approve and issue a certificate of lawfulness
REASONS FOR REFERENCE TO COMMITTEE	Member 'call in' (Councillors Redfern and Robinson – significant public interest) Objection by Epworth Town Council

POLICIES

Decisions on such applications are purely a test of the evidence available to the council. The merits of the use in land use planning terms, and the planning policies of the council, are not relevant to the consideration of such applications.

CONSULTATIONS

Highways: No objections.

Enforcement: No objections – confirm works were viewed on site on 16 July 2013.

Legal Services: No objections.

TOWN COUNCIL

Objects on the grounds that there are land ownership issues with the site.

PUBLICITY

Given the nature of the application it has been advertised via the council's website. Letters of objection have been received from the neighbouring occupants at Jasmine House raising the following concerns:

- Parts of the application site have been sold off and the permission cannot therefore be implemented.
- The period of time for implementing the permission has lapsed.
- The proposal does not comply with current planning policy.

- The proposal is detrimental to highway safety and should not have been approved.
- The proposal would harm living conditions at neighbouring properties.

ASSESSMENT

This application was deferred at the last meeting of the Planning Committee to enable members to visit the site prior to making a decision.

The application is to determine whether a certificate of lawful development can be issued to establish that the approved residential development has commenced within the prescribed time limit.

Decisions on applications of this nature are purely a test of the evidence available to the council. The onus is on the applicant to provide evidence, and the relevant test of the evidence is the 'balance of probability'. If the council has no evidence of its own to contradict or undermine the applicant's evidence and should the applicant's evidence be sufficiently precise and unambiguous, then, on the balance of probability, there may be no reason to refuse a certificate.

Permissions granted

- PA/2010/0008 – Outline planning permission to erect 8 dwellings, 6 garages and associated access (landscaping reserved for subsequent approval).

This application was approved on 4 November 2010 via an appeal (reference APP/Y2003/E/10/2128926/NWF).

- PA/2011/0911 – Approval of reserved matters following outline planning permission PA/2010/0008 dated 05/01/2010 for the erection of 8 dwellings, garages and means of access (landscaping only).

This application was submitted to the council with the two-year limit as required by the conditions attached to the outline permission. The application was approved on 27 September 2011. To comply with the relevant permissions the works at the site were required to be implemented by 27 September 2013.

- PA/2013/0874 – Planning permission to vary condition 2 of PA/2011/0911 dated 27/09/2011 to 'development shall not commence on plot 8 until a detailed specification of the construction methods to be used during the construction of any dwellings that encroach within the root protection areas of trees on the site, as detailed on the specification plan submitted to and agreed in writing by the local planning authority. Once this specification has been agreed it shall be fully implemented as such during construction.

The granting of this permission did not influence any of the time limits imposed on the original outline or reserved matters applications.

The site therefore had the benefit of the necessary permissions in place for residential development at the site subject to the necessary conditions being discharged and compliance with the specified time limits.

Conditions discharged

The council's records clearly illustrate that all pre-commencement conditions were discharged on 6 November 2011.

Works implemented

The applicant has provided a list of works which they consider amount to material operations that have been undertaken at the site. Upon inspection of the documentation it is apparent that the clearest example of works commenced is the widening of the access point off High Street, Epworth.

Section 56 of the Town and Country Planning Act 1990 provides various definitions of works which constitute a material operation. One such definition reads as follows:

"...any operation in the course of laying out or constructing a road or part of a road".

From visiting the site it is apparent that the access point off High Street has been widened and a curved wall erected along the boundary of the access road. The council's Enforcement team has confirmed that these works had been carried out at the time of their visit on 16 July 2013. From inspecting the works it is considered that they clearly constitute an operation in the course of constructing a road. This view has been verified with the council's Highways and Legal teams.

Other issues

The following issues, raised by the objector, have not been addressed in the above report:

- Parts of the application site have been sold off and the permission cannot therefore be implemented – *land ownership is a civil matter. The ability to implement the permission is entirely separate from the legal arguments under consideration in this application.*
- The proposal does not comply with current planning policy – *current planning policy is not a material consideration when considering certificates of lawfulness.*
- The proposal is detrimental to highway safety and should not have been approved – *the applications have been approved. The original merits of the case are not material to the determination of the certificate of lawfulness.*
- The proposal would harm living conditions at neighbouring properties – *the applications have been approved. The original merits of the case are not material to the determination of the certificate of lawfulness.*

Conclusion

From inspecting the submitted documentation, planning case files and records of site visits the following are considered reasonable conclusions:

- The site had the benefit of all necessary permissions for the afore-mentioned residential development.
- All pre-commencement conditions at the site were discharged prior to works commencing.

- Works to the access commenced within the specified time limits.
- The works to the access point constitute material operations as described within Section 56 of the Town and Country Planning Act 1990.

Taking account of the evidence submitted, and in the absence of any information to the contrary, it is concluded that, on the balance of probability, there is sufficient evidence to determine the application. It is considered that the development of the site commenced within the prescribed time period and that a certificate of lawful development can be issued.

RECOMMENDATION Approve and issue a certificate of lawfulness.