

Land at 74 Higher Road, Longridge, PR3 3SY

Application for a Certificate of Lawfulness of Existing Use/Development (Cleud) in Relation to Lawful Commencement of Development.

SUPPORTING STATEMENT
May 2024



REPORT CONTROL

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/1 INTRODUCTION

- 1.1. PWA Planning is retained by Onward Homes ('the applicant') to progress an application for a Certificate of Lawfulness of Existing Use ("CLEUD") in relation to the lawful commencement of development ('the proposed development') at land at 74 Higher Road, Longridge, PR3 3SY.
- 1.2. The applicant seeks confirmation that the site clearance and demolition works constitute a lawful commencement of development prior to the expiration of the extant planning permission. In this instance the planning permissions referred to are as follows:
 - Outline application 3/2016/1082 – Outline Application for outline consent for demolition of 74 Higher Road and construction of up to 123 houses on land to the rear, including access.
 - Reserved matters application for reserved matters consent (appearance, scale, landscaping and layout) pursuant to outline planning consent (ref 3/2016/1082) for the demolition of 74 Higher Road and construction of up to 123 houses on land to the rear.
- 1.3. This statement consists of Section 2 'Background', Section 3 'Relevant Legislation' and Section 4 'Planning Considerations and Conclusions'. It should be read in conjunction with all the documents submitted as part of the application.



/2 BACKGROUND

- 2.1. Outline planning permission was granted on site via appeal, which was allowed on 22nd May 2018 under application reference 3/2016/1082 and appeal reference APP/T2350/W/17/3186969 for the following description of development:

"Outline application for outline consent for demolition of 74 Higher Road and construction of up to 123 houses on land to the rear, including access."

- 2.2. A reserved matters application was submitted on 21st May 2021 under reference 3/2021/0556 and granted consent on the 20th May 2022. The description of development was as follows:

Reserved matters application for reserved matters consent (appearance, scale, landscaping and layout) pursuant to outline planning consent (ref 3/2016/1082) for the demolition of 74 Higher Road and construction of up to 123 houses on land to the rear.

- 2.3. More recently two S73 applications have been submitted, one in relation to the outline consent (3/2023/0584) and one to the Reserved Matters consent (3/2023/0585). These applications sought to vary a number of the pre-commencement conditions to allow for the demolition of the existing property and associated garage, but no other works. In each case the relevant conditions all related to final highways works, namely to Section 38 road adoption and also Section 278 highway works. The works required to satisfy these conditions, including gaining the relevant technical approvals for highway works can prove lengthy and the presence of the existing dwelling was precluding other pre-commencement works from taking place. Hence the need to revise the conditions. The applications were both approved on the 23rd of February 2024 and the 17th of October 2023 respectively.

- 2.4. In addition to this the remaining pre-commencement conditions were submitted for discharge under application 3/2023/0583, which was approved on the 23rd February 2024.

- 2.5. The outline planning permission required the development to be implemented by two years from the from the final approval of the reserved matter or, in the case of approval on different dates, the final approval of the last such matter to be approved. This means the deadline for implementing the planning permission was the 20th May 2024.



- 2.6. The applicant implemented the permission on the 2nd of May 2024, by undertaking the demolition of the garage and clearance of the site debris.



/3 RELEVANT LEGISLATION

- 3.1. Section The Town and Country Planning Act (TCPA) 1990 as amended by The Planning and Compensation Act 1991 under Section 191(1)(b) states a certificate of lawfulness of existing use or development is relevant if a person wishes to attain whether any operations which have been carried out on land are lawful. Section 191(4) states that if the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application they shall issue a certificate to that effect. The relevant section of TCPA 1990 in relation to the general condition limiting duration of a planning permission is Section 91. In this circumstance the relevant section is 91(1):

Subject to the provisions of this section, every planning permission granted or deemed to be granted shall be granted or, as the case may be, be deemed to be granted, subject to the condition that the development to which it relates must be begun not later than the expiration of—

- (a) the applicable period, beginning with the date on which the permission is granted or, as the case may be, deemed to be granted; or*
- (b) such other period (whether longer or shorter) beginning with that date as the authority concerned with the terms of planning permission may direct.*

- 3.2. The TPCA 1990 Section 56 is concerned with the time when development begun. Section 56(1)(a) states the development of land shall be taken as initiated if the development consists of the carrying out of operations, at the time when those operations begun. Section 56(2) clarifies this further, with development being taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Of relevance here, Section 56(4) states a “material operation” as noted in Section 56(2) means:

(aa) any work of demolition of a building;

- 3.3. Consideration of whether the proposed works represent lawful commencement of development are discussed within the following chapter.



/4 PLANNING CONSIDERATIONS AND CONCLUSIONS

- 4.1. The initial planning application under application reference 3/2016/1082 for an outline consent for demolition of 74 Higher Road and construction of up to 123 houses on land to the rear, including access was approved on 18th April 2017. Condition 1 of the permission stated that:

No part of the development hereby permitted shall be commenced on any phase (as referred to in Condition 3) until full details of the layout, scale and appearance of the buildings and landscaping within that phase (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the local planning authority.

- 4.2. The reserved matters application (ref 3/2021/0556) was granted on the 20th May 2022. This allowed for planning permission to be implemented until 20th May 2024.
- 4.3. A subsequent Section 73 application (ref. 3/2023/0585) was submitted on 17th July 2023 and was granted on 17th October 2023. An additional Section 73 application (ref. 3/2023/0584) was also submitted on the 17th July 2023 and was granted on 26th April 2024. As noted these applications sought to vary the trigger point that conditions needed to be discharge to allow for the implementation of the consent prior to its expiry.
- 4.4. Further to this a discharge of condition application (ref. 3/2023/0583) which dealt with the remaining pre-commencement works was approved on the 23rd February 2024. Consequently as of the 26th of April 2024 development could lawfully commence.
- 4.5. The applicant commence works on the 2nd of May which extended to site clearance and demolition of the existing garage building. Within Appendix A of this Statement a number of photos are providing showing the extent of works, with photos showing date of 2nd May 2024.
- 4.6. As noted in the previous section demolition of buildings are directly stated, within the 1990 TCPA, as representing "material operation". However to clarify, the benchmark for implementing a permission is actually notably lower than demolition works. In relation to the TCPA 1990 Section 56 the clearance works are considered an appropriate operation in the course of allowing for the demolition, which itself does constitute a material operation as detailed in Section 56(2). Consequently, it is asserted the works represent a valid implementation of aforementioned planning permission.



- 4.7. With further regard to the legislation PWA Planning have previously, in 2022, sought Counsel Advice on the matter of vegetation clearance and the implementation of planning permission. The advice related to a different site within the same authority and as such the whole advice is not provided, however the following excerpts are thought to be most relevant:

"7. Around the same time (June/July 2020) preparatory work began on the Site. I am instructed the works generally consisted of vegetation clearance (including a frontage hedgerow) and topsoil stripping. Two large trees were felled as specified in the approved removal plan. The developer intended these steps to commence development for the purposes of the implementation condition and indeed these works led to complaints from locals on that basis.

....

23. An assessment of the case law relevant to this area shows that the Courts do not require an extensive amount of work in order for the work to qualify as implementation. The question which needs to be considered is whether the work relates to the planning permission, whether it is de minimis, and whether it is lawful to the extent that it is not in breach of any pre-commencement conditions.

24. With regard to the first two issues. The focus of the section is not at all on the quantum of the work undertaken, but whether it is related to the planning permission involved. In Thayer v Secretary of State for the Environment [1992] J.P.L. 264, the Court of Appeal held that an inspector had been wrong to find that the opening of a 12 foot gap in a hedge and limited ground preparation did not constitute a specified operation in relation to a planning permission for the erection of a house and garage.

25. In R. (Connaught Quarries Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] 4 P.L.R. 18 upheld an inspector's finding that certain works which "solely comprised the scooping out of a section of hedge in the rough position of the new access" were de minimis, and did not therefore involve the beginning of development. In this case I understand the works to have been more substantial and I would consider it unlikely that they would be found to be de minimis.

26. In this I would also draw upon the example of Malvern Hills DC v SoSE (1983) 46 P. & C.R. 58 where the pegging out of the line of road was held to be an 'operation' in the laying out of a road for the purposes of the Town and Country Planning Act 1971."



- 4.8. The above opinion is clearly applicable to the site in question and provides a sound basis for concluding the works undertaken do constitute a material operation. Not only because of the relevance of the case law but also as the works undertaken at the land subject to this application, are more extensive and significant than that reference in the excerpts. This is evidenced by the photos in appendix A, which show the works as of the 2nd of May 2024.

Conclusion

- 4.9. The information provided in this submission gives clear evidence of planning permission 3/2016/1082 being implemented lawfully prior to its expiration. It is considered that the evidence provided is sufficiently precise and unambiguous to justify the grant of a certificate. Accordingly, it is clear that the applicant would be entitled to a certificate to this effect.



Appendix A - Images of site clearance works

74 Higher Road – Demolition Commencement 2nd May 2024









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