

**SECTION 192 TOWN AND COUNTRY PLANNING ACT 1990**

**LAND AT 1025 and 1027 OXFORD ROAD, TILEHURST, READING RG31 6TL**

**CUBITT HOMES DEVELOPMENTS LIMITED**

**APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF PROPOSED DEVELOPMENT**

**1. INTRODUCTION**

1.1. This is an application by Cubitt Homes Developments Limited ("Cubitt") for a Certificate of Lawfulness of Proposed Development ("a Certificate") pursuant to Section 192 of the Town and Country Planning Act 1990 ("the Act") in relation to land at 1025 and 1027 Oxford Road Tilehurst Reading RG31 6TL ("the Land").

1.2. Cubitt seeks a Certificate to confirm that the following proposed development at the Land is lawful:

"The erection of two buildings containing 12 apartments pursuant to planning permission granted on appeal reference APP/E0345/A/06/2024818"

**2. BACKGROUND AND CHRONOLOGY**

2.1. Cubitt is the registered proprietor of the Land at HM Land Registry under title numbers BK227399 and BK231885 (Office Copy Entries are attached as Appendix 1).

2.2. The Land comprises a large, cleared site on Oxford Road in Reading. This section of Oxford Road is characterised by detached dwellinghouses in large plots set back from Oxford Road on elevated ground.

2.3. On 16 May 2006 Cubitt applied for outline planning permission for the redevelopment of the Land. At that time the Land contained two detailed dwellings. The application for planning permission was attributed reference number 06/00561/OUT ("the Planning Application") by Reading Borough Council ("RBC") and sought approval for:

"Demolition of existing dwellings and erection of two buildings containing 12 apartments (resubmission of application 05/01308/OUT)" ("the Development")

2.4. The Planning Application was refused by RBC on 17 August 2006.

2.5. Cubitt appealed against the refusal of the Planning Application pursuant to Section 78 of the Act. The Appeal was attributed reference number APP/E0345/A/06/2024818 by the Planning Inspectorate ("the Planning Appeal").

2.6. On 13 December 2006, the Planning Inspector appointed by the Secretary of State allowed the Planning Appeal and granted outline planning permission for the Development ("the Planning Permission"). A copy of the Appeal Decision notice is attached as Appendix 2.

- 2.7. The Planning Permission was subject to Condition 1 which required:

*“Details of the design, external appearance of the buildings and the landscaping of the site (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved”.*

- 2.8. Condition 2 attached to the Planning Permission required:

*“The development shall be begun before either (a) the expiration of three years from the date of this permission; or (b) the duration of two years from the approval of the last reserved matters to be approved, whichever is the later. The development shall be carried out in accordance with the approved plans”.*

- 2.9. In 2007 Cubitt applied to RBC for approval of the reserved matters required by Condition 1 attached to the Planning Permission. The application was attributed reference 07/00706/REM by RBC (“the Reserved Matters Application”).
- 2.10. On 11 October 2007 RBC approved the Reserved Matters Application (“the Reserved Matters Approval”). A copy of the Reserved Matters Approval is attached as Appendix 3.

### **3. WORKS UNDERTAKEN**

- 3.1. Attached as Appendix 4 is a satellite image of the Land from Google Earth dated 7 January 2006. This shows the two previous dwellings at the Land.
- 3.2. Attached as Appendix 5 is an extract from Google Street View from April 2009 showing that the existing dwellings had been demolished on or before that date.
- 3.3. Attached at Appendix 6 is a satellite image of the Land from Google Earth date 30 May 2009. This shows that the two existing dwellings at the Land had been demolished on or before that date.
- 3.4. Attached at Appendix 7 is a satellite image of the Land from Google Earth dated 6 July 2022. This shows that the two existing dwellings at the Land had been demolished and that no further work has been undertaken at the Land.
- 3.5. Taken together these images demonstrate that the previous dwellings at the Land were demolished at some point prior to April 2009 and before 30 May 2009 at the latest.
- 3.6. They also demonstrate that no further works has been undertaken at the Land since the demolition of the existing drawings.

### **4. LEGAL FRAMEWORK**

- 4.1. Section 56(2) of the Act provides that:

“For the purposes of the provisions of this Part mentioned in subsection 3 development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out” (Emphasis added)

4.2. Section 56(4) goes on to provide that:

“In subsection (2) “material operation” means –

(a) Any work in of construction in the course of the erection of a building:

(aa) any work of demolition of a building (emphasis added)

(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

## **5. ANALYSIS**

5.1. Against this background the relevant factors are:

5.1.1. The Planning Permission authorised the demolition of the existing dwellings on the site and their replacement with two building containing 12 apartments.

5.1.2. Pursuant to Condition 2 attached to the Planning Permission, the authorised development was required to be “begun” before the later of three years from the date of the Planning Permission – 13 December 2009– or two years from the date of the Reserved Matters Approval – 11 October 2009. Therefore, the Planning Permission was required to be “begun” before 13 December 2009 (the later of the two dates).

5.1.3. As a matter of law pursuant to Section 56 of the Act in order for a planning permission to have “begun” it is necessary for a material operation to have been undertaken. The relevant material operation must also be comprised in the development authorised by the planning permission.

5.1.4. Therefore a material operation comprised in the Development authorised by the Planning Permission needed to have been undertaken prior to 13 December 2009.

5.1.5. Pursuant to Section 56(4) (aa) of the Act, any work of demolition will constitute a material operation.

5.1.6. The Planning Permission specifically authorised the demolition of the existing dwellings. Demolition of the existing dwellings was therefore “comprised within the development” for the purpose of Section 56(2) of the Act.

- 5.1.7. The evidence from the satellite imagery demonstrates that the existing buildings at the Land were demolished on or before 30 May 2009 at the very latest.
- 5.1.8. Therefore the demolition of the existing dwellings at the Land constituted a material operation comprised in the development which was undertaken prior to the deadline imposed by Condition 2 attached to the Planning Permission of 13 December 2009.
- 5.1.9. The Development was therefore “begun” for the purpose of Condition 2 prior to the expiry date of 13 December 2009.
- 5.1.10. There have been no subsequent Planning Permissions or other works of development undertaken at the Land following demolition of the existing dwellings.
- 5.2. Cubitt therefore seeks a Certificate to confirm that completion of the development authorised by the Planning Permission would be lawful.