



m a t r i x

p l a n n i n g

To:
South Holland District Council
Planning Department

02 August 2023

Attn Maxine Simmons

Dear Ms. Simmons,

Land South of Green Lane/ East of Bacons Lane Pinchbeck PE11 3XS
Proposed development of 63 houses.
Permission H14-0259-23

Certificate of Lawfulness application seeking confirmation that planning permission has been implemented with access construction.

This application seeks the Council's confirmation that permission H14-0259-23 has been implemented and development has begun on this site.

Operations have been started within the time limit referred to in Condition 1 of H14-0259-23, namely before 15 July 2023. Material operations to start a development include '*any operation in the course of laying out or constructing a road or part of a road*' [1990 Planning Act, section 56(43) (d)]. The operations are construction of part of an access, built in accordance with approved plans.

There are no planning conditions that required clearance prior to these engineering works, as such Conditions only apply to subsequent Phases 2-5.

The Council are asked for a Certificate of Lawfulness that declares that:

- a material start has been made,
- there are no pre-commencement conditions to be discharged at this stage, until such time as Phases 2-5 are to start, and
- Condition 1 of permission H14-0259-23 has been satisfied.

A report follows this letter.

Yours sincerely,

Gordon Smith, MRTPI

Report on implementation of planning permission H14-0259-23

1. Introduction

Section 191(1) of the Planning Act 1990 enables an application to the local planning authority for a decision whether operations are lawful for planning purposes.

In this case development in relation to planning permission has commenced within the three-year period required by Condition 1 of permission H14-0259-23.

This confirmation is sought to record that the permission has been implemented by virtue of works shown to have been carried out on 07 July 2023 (the date of the submitted site survey).

In this instance there are no pre-commencement conditions that must be satisfied before the development is commenced in Phase 1. Access works within in Phase 1 of the development are therefore lawful .

2. Evidence in support of the application

- A. Plan -Site Layout A1273 - 10 rev E (as listed as an approved drawing in Condition 2 of H24-0259-23)
- B. Plan -#581.CPP.03 - Construction Phasing Plan dated 06.06.23
- C. Document - 10.07.2023 – Matrix Planning - Note of PP implementation
- D. Plan - 07.07.2023 - Ratcliffe Land Surveys Drawing 6190-2, as built overlay
- E. Document - 10.07.2023 -email read receipt from Case Officer M.Simmons re start on site
- F. This letter and report being a record of the evidence

3. Relevant Background

H14-0137-19 - Full Proposed development of 63 houses with vehicular access from Surfleet Road

Granted 20 July 2020 subject to a Section 106 agreement.

H14-0259-23 - Proposed Development of 63 houses with vehicular access from Surfleet Road - approved under H14-0137-19. Modification of Conditions 3, 4, 6 & 8 relating to phasing scheme, remediation of contaminated land, construction management plan and foul water.

Granted 28 June 2023 subject to a Section 106 agreement.

The changes in this permission affect multiple conditions associated with the original approval.



4. The current permission and Phase 1

Permission H14-0259-23 above is a modification of the original permission to allow a limited lawful start on the site to preserve the permission that was due to expire before 15.07.2023.

The new permission was shaped to allow a commencement on site only in Phase 1 whilst ensuring pre-commencement conditions remain on the rest of the site. Such conditions require the Council's approval prior to works beginning on subsequent Phases 2 to 5.

The lawful start of Phase 1 of the application is limited in geographical area to an area of land which is *made ground* only, and not contaminated. This has allowed the first portion of the access to the site off Surfleet Road to be constructed in advance of works to the rest of the site. Phases 2 to 5 will only continue once all associated details are discharged via conditions controlling those phases.

An associated Deed of Variation to the original s106 carried forward previous commitments to the new permission. This Deed primarily tied the new 2023 permission to the s106 with the now superseded 2019 permission. The provisions of paragraph 4.5 in that Deed additionally recognised the early commencement of Phase 1 in advance of subsequent phases 2 to 5. The provisions in this paragraph prevent the development of any housing until a revised remediation strategy agreed. This agreement, together with correspondence at the time of its preparation, all provide evidence that the action of implementing the permission was clearly and unambiguously intended by the applicant prior to the permission expiry in July 2023

The works are detailed below in Section 4 and were largely completed on 7 July 2023 (the date of the site survey submitted with this application). The works were restricted to the initial 'Phase 1' as shown on approved plan '#581.CCP.03'¹.

¹ Evidence item B

5. The works carried out

On 10 July 2023, the Council were informed that initial access construction works had been completed and that a lawful start had been made on the permission².

The works were entirely contained within Phase 1 as shown on approved Plan #581.CPP.03 - *Construction Phasing Plan*³. In material provided by Matrix Planning to the Council on 10.07.2023, and resubmitted with this application, the works were recorded as follows:

- in the applicants briefing dated 10.07.2023 - *Note of PP implementation H14-0259-23*⁴
- in the site survey 07.07.2023 - *Ratcliffe land Surveys Drawing 6190-2, as built overlay*⁵

The following photographs were taken by the applicant's agent on 13.07.23, and supplement the earlier photographs already provided to the Council on 10.07.23 (all such information is re-submitted with this application)

Photo 1 - the temporary construction access from Green Lane (to the right in the photo below) near to the junction with Surfleet Road.



² Evidence item C, D and E

³ Evidence item B

⁴ Evidence item C

⁵ Evidence item D

Photos 2 and 3 – part of the entrance junction into the site.

Elements of the road profiles sections can be seen. They are from base level upwards:

- Soil removed to a firm bearing layer
- Geosynthetic membrane laid down (not easily viewable)
- Capping layer 410mm (compacted limestone)
- Geosynthetic Membrane on top of that (partially viewable)
- Present top layer is 300mm depth granular material subbase (Type 1 full granite)
- Kerbs installed.



End