

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H14-0691-23 **Applicant:** R Bratley (Quadring) Ltd

Proposal: Confirmation that planning permission (H14-0259-23) has been implemented with access construction

Location: Land South Of Green Lane/ East Of Bacons Lane Pinchbeck

Terminal Date: 27th September 2023

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

No policies are appropriate as part of this application as this application is submitted as part of Section 191 of the Town and Country Planning Act 1990 which provides that:

(1) If any person wishes to ascertain whether:

(b) any operations which have been carried out in, on over or under land are lawful.

He may make an application for the purpose to the Local Planning Authority specifying the land and describing the use, operations or other matter.

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

The current proposal is a lawful development certificate to ascertain whether or not a lawful start has been made of the permitted scheme.

Site Description

The application site is some 4.07 hectares of agricultural land and is accessed from Surfleet Road. It is located outside of, but adjacent to, the defined settlement limit of Pinchbeck. The southern boundary is marked by a drainage ditch. Beyond this lie houses facing Milestone Lane, and domestic gardens.

Open countryside lies to the north, and west. The B1356 Surfleet Road marks the eastern boundary, beyond which lies open countryside. The western boundary is Bacons Lane and the associated drainage ditch.

The site is within Flood Zone 3, site investigations identified significant contamination on the site.

History

H14-0549-17 - Outline. 40 dwellings with access from Surfleet Road. Approved 6-3-19 subject to a S106 agreement.

H14-0137-19 - Full Proposed development of 63 houses with vehicular access from Surfleet Road - subject to a Section 106 agreement and conditions - Granted 20 July 2020

H14-0259-23 - Section 73 Modification - Modification of conditions 3, 4, 6 & 8 relating to phasing scheme, remediation of contaminated land, construction management plan and foul water. Approved 28th June 2023.

This application allowed in condition 5, a lawful start of the area identified as Phase 1, which is part of the access to the site as shown on plan #581.CCP.03. It still required conditions for phases 2 onwards to be discharged subsequently.

Consultation Responses

No comments have been received as a result of the displaying of the site notice.

Planning Considerations

Planning guidance and case law has established that the onus is on the application to provide sufficient information to support the case for the Certificate, however, a local planning authority always needs to co-operate with an applicant who is seeking information.

If the LPA is 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, or that description as modified by the LPA or a description substituted by them, they shall issue a certificate to that effect; in any other case, they shall refuse the application.

The relevant test to be applied to the evidence is that of the "balance of probability", which is the lesser test to the criminal burden of proof.

Material Operation

To start a development it is necessary to undertake a 'material operation' which is defined in Section 56(4) of the Town and Country Planning Act 1990. There are a number of categories which define a material operation.

The basis of this application is the laying out of part of the access to the site. This category of a material operation is defined via Section 56 (4) and is defined as:

"any operation in the course of laying out or constructing a road or part of a road" (The Town and Country Planning Act 1990, Section 56(4)(d)).

The basis of this application is to confirm whether or not the work on site constitutes a material operation, thereby being a lawful start. It is also to confirm that a lawful start was made prior to the expiry of the outline permission.

Previous Planning Permissions

The original application, reference H14-0137-19 was for the development of the site to provide 63 dwellings, with vehicular access from Surfleet Road, subject to conditions and a S106 agreement, granted on 15 July 2020.

A subsequent S73 application, reference H14-0259-23 modified the conditions to the original approved scheme and was granted on 28 June 2023.

The proposal related to changes to the conditions associated with H14-0137-19. The lawful start area of Phase 1 of the application was defined and limited in geographical area, to part of the site which is 'made ground' only, and not contaminated. This allowed the first portion of the access to the site off Surfleet Road to be constructed whilst not continuing the development without first making sure that all associated details were discharged via conditions controlling phases 2 to 5. As a result of these safeguards, the scheme being granted.

The current application is to verify that a lawful start was made prior to the time when condition 1 of H14-0137-19 expired.

Condition Wording

Condition 1 of H14-0137-19 stated that:

"The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: As required by Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004."

The decision notice was dated 15th July 2020. If the development did not begun before the 15th July 2023 this means the entire permission would have expired. Planning permission would have had to have been obtained again to gain consent.

Submitted Evidence

The case of F W Gabbittas v SSE and Newham LBC JPL 630 has established that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted.

The application is accompanied by:

- Application Form
- A covering letter and report
- The Site Location Plan
- The Proposed Site Layout Plan
- The Construction Phasing Plan
- Access Construction Information
- Survey of Kerb Lines.

The report dated 10 July 2023 documents that a survey was carried out on the 7th July followed by the construction of a granite topped road, finished to subbase level, 5.5m wide, inside constructed kerbs. The subbase is 300mm deep. A temporary haul road to aid construction has also been made.

Site Visit

A site visit undertaken by a Planning Officer to erect a site notice was made on the 10 August 2023, where photos were taken of the partially constructed access road. A subsequent site visit was made by Case Officer on the 24th August 2023 where more photos were taken. Site visit photos confirmed that the road as described was in situ at that time of the site visits. It was evident that the extent of works showed the layout of part of the access road. The construction would have required an engineering operation. Thus it is reasonable to conclude that a lawful start had been made in line with the submitted report prior to the expiry of planning permission. Photographs show that kerbs had been laid delineating the outline of the road and the first layer of limestone had been sent out of the road surface. This is a material operation that shows the development has started.

The fact that the road required construction by mechanical means, is evidence that an engineering operation has taken place and that development has lawfully started. On the balance of probabilities, this, together with the submitted evidence is sufficient to conclude a lawful start within the time limits of the outline permission, has been made.

Conclusion

On the balance of probabilities it is concluded that a lawful start has been made on site to preserve

the permission before the 15th July 2023 which relates to the outline permission granted under H14-0259-23 which required a lawful start to be made prior to this date. The physical evidence on site and the submitted information is considered sufficient to establish that a lawful start has been made on site because a material operation has been carried out. As a result, the lawful development certificate can be granted.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.