Condition 16 appeal (DOC/2018/0126)

1. On 9th November 2015, Staffordshire Moorlands District Council ("the Council") granted full planning permission at Anzio Camp under reference SMD/2014/0683 for:

> "Erection of extra care housing, live work units, ancillary social centre and facilities building change of use to holiday park"

2. The permission was subject to the standard time condition, as condition 1:

> "The development hereby permitted shall be begun before the expiration of three years from the date of this permission."

3. A time period which runs 'from' a date starts on the first after that date.[9] The last day on which development could commence was therefore 9th November 2018.

4. Development was begun under the permission by the demolition of existing building EB12 in October 2018. Further works were carried out on 5th November 2018, comprising the digging out of trenches for the foundations for a building.

5. 32 conditions were part of the planning permission. Some 43 approved plans were listed in condition 2 of the planning permission.

6. Condition 16 reads:

> "Prior to the commencement of any phase of the approved development (as agreed under Condition 3) including site stripping and clearance a Landscape and Habitat Management and Maintenance plan shall be submitted to and approved by the Local Planning Authority, giving details of proposed creation, maintenance, management and development, including timescales and delivery mechanisms, for all landscaped areas and wildlife habitats across the site. This shall include full and accurate locations of existing and any proposed new habitats; technical specifications, timescales and phasing for the creation of any new habitats; 5 year establishment and aftercare management prescriptions for any newly created habitats; and minimum 20 year maintenance and management operations for all habitats throughout the site to be monitored and reviewed every 5 years. Following approval of such a management plan, it shall be fully implemented in accordance with the details and timescales so approved.

[9] *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336.

Reason: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features, in the interests of visual amenity, in accordance with Policies DC3 and C3 of the Staffordshire Moorlands Core Strategy."

7. On 7th September 2018 the appellant made an application to the Council for the approval of details under condition 16 (reference DOC/2018/0126).

8. The Council accepted that this application was validly made.

9. The Council 'closed the file' on the application on 1st March 2019 on the basis that the permission had lapsed. That was a refusal of the application.

10. The Council was wrong. Development had commenced under the planning permission within the three year period under condition 1. For the purpose of meeting the condition in a planning permission requiring development to be begun within a certain period, the Town and Country Planning Act 1990, s 56(2) provides that:

> "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."

11. Section 56(4) provides as relevant:

> "In subsection (2) "material operation" means:
>
> (a) any work of construction in the course of the erection of a building;
>
> (aa) any work of demolition of a building;
>
> (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
>
> …"

12. The demolition works were comprised in the 2015 planning permission and conditions on the permission repeatedly acknowledged that it included demolition: conditions 3, 4, 5, 14.

13. No conditions required any details to be submitted or approved by the Council prior to the carrying out of demolition.

14. The conditions which required the approval of details:

(i) in conditions 3, 4 and 5, expressly said that works of site clearance and demolition could take place without the approval of those details;

(ii) by condition 3 site clearance and demolition was allowed to take place before the Phasing Programme had been submitted and approved. Those works were not included in the phases. Consequently conditions which required details to be approved before a 'phase of the development (as agreed under Condition 3)' was commenced, did not require details to be submitted before demolition took place. This applies to conditions 3, 4, 5, 8, 16, 25, 30.

15. Consequently no details had to be submitted prior to the commencement of demolition works. The demolition works in October 2018 were therefore the beginning of development under the planning permission. Condition 1 was satisfied and the permission has therefore not lapsed.

16. The foundation trenches were works which are due to fall within the phases, but applications for all details have been made and so their approval would also mean that development would have been commenced by that those works: see *Whitley*. Since development was lawfully begun by the demolition works, that issue does not fall to be determined.

17. As development had lawfully begun, the permission had not lapsed and so the Council's reason for turning down the application on 1st March 2019 was therefore wrong.

18. No matters were raised on the merits of the application which had been made and so it should be approved.