

DELEGATED DECISION REPORT

SMD/2024/0523
Valid 12/12/2024

FOLE DAIRY UTTOXETER
ROAD
FOLE
UTTOXETER

CERTIFICATE OF
LAWFULNESS FOR THE
IMPLEMENTATION OF
PLANNING PERMISSION
REFERENCE SMD/2018/0234
CONSISTING OF WORKS TO
THE ACCESS APPROVED
UNDER THE PLANNING
PERMISSION

(CERTIFICATE OF
LAWFULNESS - PROPOSED)

MAIN ISSUES

Whether or not the works carried out at an approved housing development site constitute the commencement of development and the implementation of the planning permission.

DESCRIPTION OF SITE

The site is a former dairy on the south side of the A623 main road, Uttoxeter Road, within the village/hamlet of Fole. There are buildings to the north and east sides but the south, west and east of the site is largely open, mostly fields. The site has been cleared of buildings and levelled. Some access works including kerbing and surfacing have been undertaken at one of the proposed site entrances off the lane to the east of the site.

PROPOSAL

This is an application for a Certificate of Lawfulness for a proposed development. The applicant seeks a certificate to confirm that works undertaken at the site, comprising some access works, were lawful and that they constitute the commencement of works to build 48 houses approved under outline permission SMD/2018/0234 and Reserved Matters approval SMD/2021/0550 and therefore the implementation of the approvals.

Condition 1 of the outline permission states:

“The development hereby permitted shall be begun either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters...”

The Reserved Matters approval was given on 22nd December 2022. Therefore the approvals require the commencement of works by 22nd December 2024 otherwise the permissions will have expired and any commencement of works after that date would not be lawful (and new planning applications would need to be submitted for the proposed development).

The applicant claims that access works comprising extraction, laying of aggregate and other layers of solid materials and the insertion of stone kerbing were undertaken before that date and therefore constitute the implementation of the planning approvals and that these are therefore still extant.

A Planning Statement has been included in the application which states the following:

“At the beginning of 2024 the Applicant wrote to the Local Planning Authority setting out their intention to commence work to secure the permissions, as market conditions were poor. In order to achieve this all pre-commencement work would need to be discharged or amended. There were six pre-commencement conditions on the Outline Permission, three pre-commencement conditions on the Reserved Matters Permission and four clauses within the S106 agreement.”

The Statement includes all the Decision Notices issued by the Council which approve the details required by the pre-commencement conditions. Also included are Non Material Amendment Decision Notices which approve changes to some of the pre-commencement condition so that they require the approval of details before the development is first brought into use rather than before the development has commenced. The Statement continues as follows:

“Work commenced on site 23rd October 2024 as set out in letter of the same date from Graham Hale & Company presented at Appendix 2. A site plan is presented at Appendix 4 to show the extent of work which was agreed with Officers prior to commencement in order to amount to a lawful start.”

Photo's of the access dated 23rd October 2024 have been provided and show the access works described. The Statement concludes with the following:

“All pre-commencement work that could be discharged was discharged or amended via Non Material Amendments prior to the commencement of development. All other matters did not go to the heart of the permission and were reliant on third parties getting back to the LPA in good time- which they didn't- and the LPA accept the applicant has done all that could be done. Commencement of work started prior to 21st December 2024 and it is requested a Certificate of Proposed Lawful Development be issued on this basis.”

Also included in the Statement are photo's of other works required by other conditions before the commencement of works, such as photos of tree protection fencing required to be installed before the commencement of works.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

N/A

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

2018 0234: Outline permission for redevelopment of the site to provide 48 dwellings.

2021 0550: Reserved Matters approval for the above. Decision date: 22.12.22.

CONSULTATIONS

Publicity

Site Notice expiry date: N/A

Neighbour consultation period ends: N/A

Press Advert: N/A

Public Comments

None.

Town / Parish Comments

None.

OFFICER COMMENTS

In order for the certificate of lawfulness to be granted, the Council will need to be satisfied that the access works undertaken constitute development which was undertaken before the permissions expired i.e. 22.12.24, therefore being deemed to be the commencement of works and therefore the implementation of the planning approvals. The applicant must therefore provide evidence of this and if the Council decides that on the balance of probabilities the works did constitute development before this date and has no counter evidence of its own, then the certificate of lawfulness should be granted. The Council must also be satisfied that all details required to be submitted before the commencement of works under the planning conditions imposed on the approvals, were also approved/discharged and other conditions requiring actions before works commenced were also implemented.

The applicants Planning Statement includes photographs of the access works undertaken and claims these were taken on 23.10.24. This can't be verified. However, the Planning Statement was received on 28.11.24, before the expiry date of the planning approvals. Following a site visit from the case officer, the works undertaken are consistent with works shown in the photographs. I consider this to be sufficient evidence that the works were undertaken "in time". I also consider the works can be deemed to constitute "development" that would normally require planning permission in its own right. The works are also consistent with the approved drawings which show the access position and dimensions. I am also

satisfied that the development undertaken before 22.12.24 constitutes the “commencement of development”. The scope of works as shown in the photographs is very similar to the access works undertaken for an approved housing development in Biddulph, approved under permission SMD/2014/0580. The Council confirmed by email on 13.3.18 that the works on that site constituted the commencement of development and the implementation of the planning permission. The email is on the application file.

I have checked all the Decision Notices relating to all of the pre-commencement of works conditions on both approvals and can verify that all details required to be submitted under all pre-commencement conditions were approved before 22.12.24. Some of those conditions were amended via Non Material Amendment approvals requiring that details be submitted before the development was brought into use and not before works commenced. There was one condition requiring an action before the commencement of works. This required that tree protection fencing be installed before works commenced. Photographs in the Planning Statement show the fencing in place and was still in place at the time of the site visit.

CONCLUSION

Sufficient evidence has been provided to demonstrate that the works undertaken before the planning approvals expired can constitute the “commencement of development” approved by the planning permissions and that all pre-commencement conditions details have been approved before the works were undertaken. There is no breach of any conditions requiring action before the commencement of development. Therefore the planning approvals are deemed to have been implemented (allowing the development to proceed without the submission of a new full or outline planning application for the development) and a Certificate of Lawfulness can be granted to confirm this.

OFFICER RECOMMENDATION : GRANT CERTIFICATE OF LAWFULNESS

Case Officer: Chris Johnston
Recommendation Date: 14.2.25

X 

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council