



Appeal Decision

Site visit made on 5 November 2025

by Sarah Dyer BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2025

Appeal Ref: APP/W3520/X/23/3335099

Land To The Southwest of Nutwood, The Street, Bacton, Suffolk IP14 4LF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Philip Ling against the decision of Mid Suffolk District Council.
 - The application ref DC/23/03916, dated 18 August 2023, was refused by notice dated 26 October 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is confirmation of lawful commencement of Phase 1 (Enabling Works) and Phase 2A (Plot 1) as approved under reserved matters approval DC/20/02656 pursuant to permission DC/18/04868 (Erection of up to 5 No. detached dwellings with garages).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted under section 192 of the Town and Country Planning Act 1990 (the Act) which relates to proposed development. The Council determined the application on this basis and also refers to section 192 of the Act in its decision. The application form refers to both proposed building operations and a proposed change of use of land. However, it is clear from the appeal submissions that the appellant seeks to establish that there has been a lawful commencement of a planning permission which would enable further operational development to be carried out. I have therefore determined the appeal on the basis that it relates to building operations which fall under section 192(1)(b) and using the description set out in the First Schedule of the Council's refusal notice. This is reflected in the banner heading.
3. On 28 November 2017 outline planning permission was granted on the appeal site for the erection of up to five detached dwellings with garages (Council Ref. DC/17/04991) (the 2017 permission). On 14 March 2019 planning permission to vary Condition 1 of the 2017 permission was granted (Council Ref. DC/18/04868) (the 2019 permission).
4. The appellant sets out in his application form that the application relates to Phases 1 and 2A of planning permission ref DC/18/04868 which is the 2019 permission. The First Schedule of the LDC sets out a description of the use or operations as required by Section 192(3)(b) of the Act. This refers to Phase 1 (Enabling Works) and Phase 2A (Plot 1) and reflects the application form. The description clarifies

that the application for the LDC only relates to the question of whether Phases 1 and 2A have been lawfully implemented and not the development under the 2019 permission as a whole. I have determined the appeal on that basis.

Main Issue

6. The main issue is whether or not the Council's decision to refuse the application was well-founded.

Reasons

5. Condition 2 of the 2019 permission establishes that the development permitted by that consent must be begun not later than 28 November 2020 and Condition 3 sets out that approval of reserved matters shall be obtained before development is commenced.
6. There is no dispute between the parties that only the enabling works and one of the five dwellings which were approved under the 2019 permission has reserved matters approval, that being Plot 1 (Phase 2A).
7. The Council's position is that Condition 3 of the 2019 permission requires that all reserved matters, in relation to all five dwellings, must be secured before the commencement of development. On that basis any works of commencement could not be considered to be lawful because reserved matters have not been agreed in respect of four of the five dwellings.
8. The appellant argues that in securing reserved matters approval for Phase 1 and Phase 2A and carrying out works before the deadline set out in Condition 2 which is 28 November 2020, he has lawfully implemented the 2019 permission. He considers that the 2019 permission does not require the submission of all reserved matters applications in order for the development to be lawfully implemented.
9. The appellant considers that the 2019 permission needs to be read as a whole and on that basis should be interpreted to allow reserved matters to be submitted, approved and subsequently implemented on a phased basis. He refers to the Council accepting the reserved matters on Phase 1 and Phase 2A as an acceptance of this. It is appropriate to consider the scope of the application when interpreting the intention of planning conditions.
10. Condition 2 is clear; development had to begin before 28 November 2020. The Council states that in its view the culvert works which have been carried out amount to a material operation and would constitute 'commencement'. I observed during my site visit that an access has been formed onto the site in the approximate position identified on the plans submitted with the Statutory Declarations provided by the appellant. There is no evidence before me which results in my reaching a different conclusion than the Council. Thus, there is no conflict with the timeframe set out in Condition 2 subject to a consideration of the effect of Condition 3.
11. The key issue in the appeal is whether or not Condition 3 precluded the development from being carried out lawfully in accordance with Condition 2 because not all the reserved matters had been agreed on the development as a whole.

12. The commentary on the Powergen judgement which is provided by the Council highlights that in that case the applicant could have submitted reserved matters approval for part of the development, expected it to be dealt with on its merits and commenced with approval 'it was the Grampian phrasing' that required all details to be submitted. The same approach applies in this appeal. The appellant could and did submit reserved matters for part of the site, but Condition 3 is phrased as a pre-commencement condition which could be regarded as applying to the development as a whole i.e. all five dwellings and associated enabling works.
13. The appellant argues that in submitting the phasing plan to vary the 2017 permission it is reasonable to read Condition 3 as allowing reserved matters to be submitted, approved and subsequently implemented on a phased basis. That is an appropriate interpretation of Condition 3. However, Condition 3 does not set out different timetables for the implementation of a phased development, therefore, read in conjunction with Condition 2 it is clear that the requirements of a lawful commencement are both the approval of all reserved matters and a start on site by 28 November 2020.
14. The appellant questions whether Condition 3 is a 'true pre-commencement condition'. His basis for that is that if the Council intended that all reserved matters should be in place before commencement, then Condition 3 should have made that clear. However, the application for a variation was made for the whole of development permitted under the 2017 permission as referenced in the description of development, notwithstanding the reference to a phasing plan. Thus, it is reasonable to regard the requirements of Condition 3 as relating to the whole development. This is supported by the reason for Condition 3 which emphasises the importance which the Council placed on an orderly and well-designed development in the context of the character and appearance of the neighbourhood. For these reasons, Condition 3 goes to the heart to the planning permission and has the status of a pre-commencement condition.
15. The appellant also suggests that the reference to 'site' in Condition 3 could be regarded as meaning part of the site on which reserved matters have been approved. However, if this had been the Council's intention this would have been stated in order to ensure that the condition was precise.
16. The appellant considers that the approach could be adopted that development other than on Phase 1 and Phase 2A would be in breach of Condition 3 but that the works on those phases pursuant to the approved reserved matters would not. That is not a matter before me and is not of relevance to whether or not Condition 3 should be regarded as a pre-commencement condition.
17. The appellant also considers that it is appropriate to interpret the conditions in a flexible way bearing in mind that the Council has already considered the development to be acceptable. Furthermore, the appellant indicates in his application form that there would be officer support for a new outline or full planning application. However, the planning merits of the development are not relevant and are not an issue for me to consider in the context of an appeal under section 195 of the Act. My decision rests on the facts of the case and on relevant planning law and judicial authority.
18. A developer can apply for and obtain multiple approvals covering all or part of a site and there is generally no requirement for a developer to complete a

development which has planning permission. However, these matters are not directly relevant to this case because the key consideration is whether the development has been lawfully commenced not that it must be completed within a defined period.

19. Drawing all of these points together, it has not been established that Phase 1 and Phase 2A have been lawfully implemented because whilst development was commenced within the timescale set out in Condition 2, in the absence of the approval of reserved matters for the other phases there has been a failure to comply with the requirements of Condition 3.
20. The matter of abandonment of a lawfully implemented planning permission does not arise in this case because it has not been established that the development described in the application has been lawfully implemented.

Conclusion

21. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for confirmation of lawful commencement of Phase 1 (Enabling Works) and Phase 2A (Plot 1) as approved under reserved matters approval DC/20/02656 pursuant to permission DC/18/04868 (Erection of up to 5 No. detached dwellings with garages) on land to the Southwest of Nutwood, The Street, Bacton, Suffolk is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Sarah Dyer

INSPECTOR