

Ms Katie Chew
Planning Officer
Kirklees Council
Planning and Development Service

Dear Ms Chew,

**Re: Objection to Lawful Development Certificate Application – Low Farm,
Wakefield Road, Flockton (Ref: 2025/CLD/92303/E)**

I am writing to object to the issue of a Lawful Development Certificate (LDC) for the above site on the grounds that development commenced unlawfully and in breach of **Condition 5** of planning permission **2021/62/93644/E**, which is a true pre-commencement condition.

Grounds for Objection

According to available information, the applicant undertook works, including the laying of a section of access road, between **4 August and 8 August 2025**. These token works were carried out with the apparent intention of preventing the planning permission from expiring, because the original permission was granted **24 August 2022** and the statutory three-year period for implementation was due to lapse **24 August 2025**.

However, the delegated officer report **2025/44/91494/E** confirms that Condition 5, which required the submission and approval of detailed landscaping and ecological management measures, was not discharged until **12 August 2025**. The condition is worded as follows:

“Prior to development commencing, the following details of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority...”

This constitutes a true condition precedent under the Whitley Principle (*Whitley & Sons v Secretary of State for Wales [1992]*), which holds that development commenced in breach of such a condition is unlawful and cannot lawfully implement the planning permission.

The courts have consistently upheld this principle, including in:

- *Greyfort Properties Ltd v SSCLG [2011]* – where access works were deemed unlawful due to non-discharge of ground level conditions.
- *R (Friends of West Oxfordshire Cotswolds) v WODC [2024]* – where retrospective quashing of a condition discharge invalidated commencement.
- *Leisure Great Britain plc v Isle of Wight Council (1999)* – confirming Whitley as a strict legal rule.

The works undertaken at Low Farm clearly constitute development under Section 55 of the Town and Country Planning Act 1990. And because they were carried out in breach of a condition that goes to the heart of the permission, the development was unlawfully commenced and cannot be considered to have lawfully implemented the planning permission.

Implications of Refusal

If the LDC is refused, it follows that the planning permission **2021/62/93644/E** has now expired because the three-year implementation period has elapsed, and no lawful commencement took place. This is a direct consequence of the applicant's failure to discharge Condition 5 prior to starting development.

Legal Context: East Bergholt

In making its decision, I draw the authority's attention to the findings of the Court of Appeal in *East Bergholt Parish Council v Aggett & Ors* [2019] EWCA Civ 2200. The Court made it clear that local planning authorities must not misapply planning law or policy to avoid undesirable outcomes, such as the cost of defending an appeal or judicial review. Authorities must base decisions on legal correctness and planning merits, not on risk avoidance or expediency.

Conclusion

In light of the above, I respectfully request that the authority refuse the Lawful Development Certificate.

To grant such a certificate would be contrary to established planning law, the Whitley Principle, and the findings of the Court of Appeal in *East Bergholt*, and would undermine the integrity of the planning system.

Given the potential legal ramifications of issuing an LDC in this case, I request that advice is sought from the authority's Legal Counsel.

Yours faithfully