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**Our ref.**  
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03 October 2025

Dear Sir/ Madam,

**CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING USE) – IMPLEMENTATION OF PLANNING CONSENT THROUGH LAYING OF RETAINING WALL FOUNDATIONS FOR PLOT 12 APPROVED PURSUANT TO APPLICATIO 2022/93254**

**LAND OFF FIELDHEAD LANE, BIRSTALL, BATELY**

**PLANNING PORTAL REFERENCE: PP-14308631**

We write in support of an application for a certificate of lawfulness (existing use) at Field Head Lane, Birstall. The certificate seeks to confirm that works have been lawfully implemented.

**Background**

The works undertaken are the laying of foundations for a retaining wall to Plot 12. Plot 12 was granted planning consent through Reserved Matters consent reference 2019/61/92710/E, approved on the 11<sup>th</sup> September 2020. The Reserved Matters were submitted pursuant to Outline consent 2017/93347 which was approved on the 9<sup>th</sup> January 2018. Whilst there are no timescale relating to the implementation of the planning consent on either the Outline or Reserved Matters application, Sections 91 and 92 of 1990 Act impose default time limits on the implementation of planning permission: on Outline permissions, three years to apply for reserved matters and two years to implement the permission from the final approval of reserved matters.

Outline planning consent was granted on the 9<sup>th</sup> January 2018. The Reserved Matters submission was received by the Council on the 13<sup>th</sup> August 2019, within the three-year time limit. The Reserved Matters was granted on the 11<sup>th</sup> September 2020, to ensure an extant permission, the development therefore needed to be implemented by the 12<sup>th</sup> September 2022.

This application seeks to obtain a certificate of lawful development to provide necessary confirmation that works which have been undertaken on site constitute a lawful start on site for plot 12.

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As highlighted above, outline planning permission was granted on 9<sup>th</sup> January 2018 for residential development comprising 32 dwelling. A subsequent reserved matters submission was granted on 11th September 2020 with details for the erection of 32 dwellings.

In the intervening period there have been a number of S73 applications and Non-Material Amendment applications associated with the development site however these do not change the key implementation dates as set out.

For completeness the Decision Notice 2022/70/92675/E is the most up to date Reserved Matters approval and the scheme which has been implemented. The application was submitted on the 8<sup>th</sup> August 2022 and approved on the 1<sup>st</sup> February 2023. Details are set out below.

Copies of the relevant decision notices are enclosed at **Appendix 1** for completeness.

### **Implementation of Planning Permission**

In deciding whether a planning permission has been implemented, it is first necessary to ensure that any pre-commencement conditions have been discharged. It is then necessary to look at what physical works have been carried out on the application site.

1. Discharge of Necessary Pre-Commencement Conditions
2. Physical works

#### Discharge of Necessary Pre-Commencement Conditions

Since the grant of outline approval, reserved matters, the subsequent variation of condition and discharge of condition applications there has been extensive dialogue between the Local Authority, Case Officer Nick Hirst, and the Applicant's advisers both Acanthus WSM Architects and Johnson Mowat Planning.

Dialogue was particularly important as the application expiration date approached in the summer of 2022 as details to ensure implementation of the application were worked through.

#### *Outline Pre-Commencement Conditions*

Outline Condition 3: Tree Protection Fencing – Application 2021/44/91883/E received on 5<sup>th</sup> May 2021 and approved on 29<sup>th</sup> June 2021.

Outline Condition 6: Phase II Intrusive Site Investigation Report – Application 2019/44/91089/E received on 1<sup>st</sup> April 2029 and approved 17<sup>th</sup> May 2019.

Outline Condition 7: Remediation Strategy - Application 2021/ 44/93967/E received on 14<sup>th</sup> October 2021 and approved 4<sup>th</sup> March 2022.

Outline Condition 11: Road Traffic Noise – Application 2021/44/91883/E received on 5<sup>th</sup> May 2021 and approved on 29<sup>th</sup> June 2021.

Outline Condition 13: Biodiversity – Application 2021/44/93097/E received on 3<sup>rd</sup> August 2021 and approved 8<sup>th</sup> November 2021.

Outline Condition 14: Drainage - Application 2021/44/91883/E received on 5<sup>th</sup> May 2021 and details approved in principle on 29<sup>th</sup> June 2021 although maintenance regime is required to be secured. Condition timescales varied under application ref 2022/70/92583/E.

Outline Condition 15: Drainage Calculations – Application 2019/91727 received 22<sup>nd</sup> May 2019 and approved 30<sup>th</sup> July 2020 and 2020/93570 received 21<sup>st</sup> October 2020 and approved 19<sup>th</sup> January 2021.

Outline Condition 16: Public Open Space - Application 2021/44/91883/E received on 5<sup>th</sup> May 2021 and approved on 29<sup>th</sup> June 2021 confirms details approved under Reserved Matters.

Outline Condition 17: Affordable Housing - Application 2021/44/91883/E received on 5<sup>th</sup> May 2021 and approved on 29<sup>th</sup> June 2021 confirms details approved under Reserved Matters and associated S106 agreement.

Outline Condition 18: Application 2021/44/91883/E received on 5<sup>th</sup> May 2021 and approved on 29<sup>th</sup> June 2021 confirms that the Council do not expect any details to be submitted in association with condition 18.

All Outline conditions, as listed above, were successfully discharged in advance of the application expiration date. However, pre-commencement condition 5 remained outstanding.

Condition 5, relating to highways works, was the subject of a discharge of condition application, reference 2022/90153. The application was received by the Council on the 17<sup>th</sup> January 2022 however discussions with the authority, specifically with Highways Officers in relation to S38 caused some delay to determination. As the expiry date of the planning consent approached, discussions with the Local Authority were undertaken to vary the condition from a pre-commencement to prior to occupation condition. In principle agreement to the vary of condition was provided by the Case Officer on the 25<sup>th</sup> July 2022 (**Appendix 2**) following which application 2022/90153 was withdrawn and a S73 application, reference 2022/70/92583/E, submitted on the 3<sup>rd</sup> August 2022 to ensure the condition was triggered by pre-occupation rather than pre-commencement. A variation to condition 14 was also included to ensure drainage infrastructure was implemented prior to occupation. A copy of the application cover letter is provided with this submission at **Appendix 3**.

Physical onsite works were only implemented following the submission of this application and after receiving an in-principle agreement to the variation. At the point of the determination of application 2022/70/92583/E, a new consent was created running on the same timescales as the original. The scheme would therefore have to be implemented prior to the 12<sup>th</sup> September 2022.

#### *Reserved Matters Pre-commencement conditions*

Only one condition on the original Reserved Matters (2019/61/92710/E) notice is written as a pre-commencement condition; condition 2. This condition, like condition 5 of the Outline relates to the submission of highways details. An application to vary the condition (2022/70/92675/E) was sought to ensure that it aligned with the timing and requirements of condition 5, prior to occupation. A copy of the application cover letter is provided with this submission at **Appendix 4**.

### Physical Works

It is necessary to assess the extent to which physical works were undertaken sufficient to have implemented development, in this case for Plot 12. The works must have been commenced prior to 12<sup>th</sup> September 2022.

In accordance with Section 56(2) Town and Country Planning Act 1990, development may be begun under a planning permission by the carrying out of a material operation as outlined in Section 56 (4) of the Town and Country Planning Act 1990.

The general approach to construction is that the works that are done to commence development must be more than de-minimus. However, it does not matter if the cost of the works in question is small in comparison with the overall cost of the projected development. In *Malvern Hills District Council v Secretary of State for the Environment* [1982] J.P.L.439 the Court of Appeal held that the making out of the line and width of a road with pegs amounted to an operation while laying out a road. The works which are carried out must form part of the development.

The commencement of development comprised the laying of foundations for a retaining wall at Plot 12 as permitted. Contractors attended site on the 9<sup>th</sup> September 2022 to undertake the works which are evidenced in the attached photos at **Appendix 5**. Whilst the photos are undated, the metadata as seen under the photo properties clearly identifies each photograph as being taken on the 9<sup>th</sup> September 2022.

A confirmation email, from the contractor, was issued on the 9<sup>th</sup> September 2022 to confirm works had been undertaken and confirm the location of the retaining wall foundation which has been commenced. It is clearly identified within the email as that relating to Plot 12. A copy of the email is provided at **Appendix 6**. The supporting photographs were issued with this email.

The works undertaken are clearly more than de-minimus and therefore are a material operation pursuant to the implementation of the permission. The works took place in advance of the expiry date of the planning consent.

This information and the attached submitted material, forms the basis of our application for a Certificate of Lawfulness under 191 of the Town and County Planning Act 1990. We trust that this Certificate can be issued based on the information supplied. We look forward to receiving confirmation of registration of this application. Please contact me if any additional information is required.

Yours faithfully

**Becky Richmond**  
Joint Managing Director