

**RE: BAE SYSTEMS (OPERATIONS) LTD**  
**SAMLESBURY AERODROME BALDERSTONE BB2 7LF**

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**OPINION**

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**Introduction**

1. In May 2024 an application for Certificate of Lawfulness of Existing Use or Development (“the Certificate Application”) was made to Ribble Valley Borough Council (“the Council”) to confirm that a material operation had been undertaken to commence construction of the development approved by outline planning permission ref: 3/2006/0583 (“the Outline Permission”) and reserved matters approval ref: 3/2022/0434 (“the Reserved Matters Permission”) at Samlesbury Aerodrome (“the Site”).

2. The Council have indicated in an email dated 15.10.24 that they are not minded to grant the Certificate Application:

*“We are unable to support the submitted CLUD due to the limited extent of work undertaken and that this work does not appear to be directly related to the laying out or constructing a road or part of a road required for the proposed development. The timescales for the works and location within the centre of the site would indicated that the works do not form part of the approved development.”*

3. In a further email of the same date the Council invited submissions on condition 2 of the Outline Permission: *“I would advise reviewing condition 2 of the original outline permission 3/2006/0583 in terms of the wording relating to the development hereby permitted”*.

4. I am asked to advise the applicant, BAE Systems (Operations) Ltd (“the Applicant”) on the approach taken by the Council and the Certificate Application generally.

## **The Outline Permission**

5. The Outline Permission was granted on 15<sup>th</sup> May 2007 for: *“Expansion of existing aerospace manufacturing and engineering facility to include additional industrial (57,884 sqm) and office space (39,048 sqm) with associated access, car parking, surface water attenuation works and ancillary reception building, creche and restaurant (total ancillary floorspace 2,916 sqm)”*.
6. That description of development defines the development that was granted planning permission by the Outline Permission (“the Development”). The Outline Permission makes it clear that the Development was to be delivered in phases. Condition 1 states:  
  
*“In respect of the buildings to be constructed within each phase of the development hereby approved, no development shall commence on site until approval of the details of the design and appearance of the buildings, landscaping of the site and the siting of all development other than that shown on the approved drawing reference AR/WB/00/DR/01/002/C (hereinafter referred to as "the reserved matters") has been obtained from the Local Planning Authority.”*
7. Condition 1 provides a specific definition of reserved matters that is to be used throughout the remainder of the permission. Pursuant to condition 1 there is no requirement to obtain reserved matters for the totality of the Development before development can commence, instead reserved matters can be obtained on a phase by phase basis and once reserved matters has been granted for that phase development of that phase can commence (subject to all other relevant conditions being complied with).
8. Condition 2 of the Outline Permission states:  
  
*“Applications for approval of all reserved matters shall be made to the Local Planning Authority not later than the expiration of fifteen (15) years beginning with the date of this permission and the development hereby permitted shall be begun either before:  
  
The expiration of three (3) years from the date of this permission, or*

*The expiration of two (2) years from the date of approval of the last of the reserved matters to be approved whichever is the later.”*

9. The reference in condition 2 to “development hereby permitted” in my view must be a reference to the description of development contained in the Outline Permission. That is the plain and ordinary reading of the phrase and that is the development which the Outline Permission grants consent for. This interpretation is enforced by reviewing the numerous other conditions that make reference to phases of the Development. Where the conditions attached to the Outline Permission are concerned with a phase of the Development they make it clear by stating so, whereas when they are concerned with the Development they refer to the Development rather than a phase of development.
10. There are a number of pre-commencement conditions attached to the Outline Permission for which numerous discharge of condition applications have been granted. These are summarised at 5.7 of the Planning Statement supporting the Certificate Application. Pursuant to these consents extensive development has commenced and been completed at the Site.
11. From the extensive series of consents and development that has been completed on the Site my understanding is that the Council do not dispute that the Development was lawfully commenced on Site within the time frame set out in condition 2. As a result the Outline Permission has been implemented, remains extant and the development of the Site for the Development approved by the Outline Permission is lawful subject to compliance with other relevant conditions.
12. There is no separate condition imposed on the Outline Permission which governs when any given phase of development has to be implemented by. The only requirement is that contained in condition 2 with regards to the Development. The time restriction imposed under condition 2 is one that is lawful under s.92(2) and (4) of the Town and Country Planning Act 1990. Consequently, there is no need to imply any alternative time limitation condition into any reserved matters approvals. Once the Development has been implemented in accordance with condition 2 there is no time restriction on when any later grants of reserved matters approval for subsequent phases need to be implemented by.

13. The only further restriction imposed by condition 2 is that all reserved matters applications were required to be submitted within 15 years of the grant of the Outline Permission. The application that resulted in the Reserved Matters Permission was submitted within that 15 year window. Accordingly, as condition 2 of the Outline Permission has been met, there is no time limit on when the Reserved Matters Permission needs to be implemented by.

### **The Certificate Application**

14. The Certificate Application was made to confirm that a material operation had been undertaken to commence construction of the development approved the Outline Permission and the Reserved Matters Permission. The Certificate Application was put on the basis that works carried out in March 2024 had implemented the Reserved Matters Permission and therefore a certificate should be granted.

15. For the reasons I have set out above, there is no time limit on when the Reserved Matters Permission needs to be implemented by provided that implementation of the Development had taken place within the time frame contained in condition 2 of the Outline Permission. My understanding is that the Council agree that condition 2 of the Outline Permission has been met in this regard. Condition 2 also required that any reserved matters applications were made within 15 years of the date of the Outline Permission, that requirement was met by the Reserved Matters Permission.

16. As a result, in order for the development of the phase approved by the Reserved Matters to be lawfully carried out all that is required is that the other salient pre-commencement conditions attached to the Outline Permission have been met. Paragraphs 5.6 to 5.8 of the Planning Statement submitted in support of the Certificate Application detail the pre-commencement conditions that have been discharged, I am not aware that this is disputed by the Council.

17. It follows that the Council are lawfully able to grant the certificate sought by the Applicant albeit on a different basis. I note that the application was made pursuant to s.191 of the 1990 Act whereas in reality what is actually sought is a certificate under s.192 to confirm that the development of the site for the development approved by the

Reserved Matters Permission pursuant to the Outline Permission would be lawful. Those instructing me should engage with the Council to seek approval under s.192 rather than s.191 but I can see no reason in principle why the Council cannot determine the current application on the basis set out above.

### **Conclusion**

18. In my opinion once the Development was lawfully commenced within the time limit set out in condition 2, the Outline Permission was implemented. Following that, there was no requirement for any subsequent phases of development to be commenced within any particular time period, instead the requirement was that the relevant reserved matters application was submitted within 15 years of the grant of the Outline Permission.
19. The application for the Reserved Matters Permission was submitted within 15 years of the grant of the Outline Permission. Consequently, provided all other relevant pre-commencement conditions under the Outline Permission have been discharged in relation to the Reserved Matters Permission the development of the site for the development approved by the Reserved Matters Permission would be lawful. In these circumstances the Council could, and should, issue a certificate of lawfulness.
20. Given these conclusions I have not addressed the question of whether the works carried out on site as detailed in the Certificate Application amount to a lawful commencement for the purposes of s.56 of the 1990 Act as this is unnecessary.

FREDDIE HUMPHREYS

29<sup>th</sup> October 2024

Kings Chambers

Manchester – Leeds – Birmingham – London