



For and on behalf of  
**United Utilities Property Services**

**SUPPORTING STATEMENT**  
**Application for a Certificate of Lawfulness of Existing Use or Development (CLEUD)**

**Phynis Farm, Catlow Road, Slaidburn, BB7 3AQ**

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## 1.0 INTRODUCTION AND BACKGROUND

1.1 This Supporting Statement has been prepared by DLP Planning Ltd, on behalf of United Utilities Property Services (the “Applicant”), in support of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) under Section 191 of the Town and Country Planning Act 1990 (as amended). It seeks formal confirmation that the development approved by planning permission ref: 03/2023/0056, granted on 16 June 2023, has been lawfully implemented.

1.2 Planning permission ref: 03/2023/0056 grants full planning permission for:

*“Conversion of former farm buildings to form 4 dwellings including the change of use of land to form private curtilage and the remodelling of the central courtyard at Phynis Farm, Catlow Road, Slaidburn, BB7 3AQ”*

1.3 The permission was subject to 22 conditions. Those of particular importance to this CLEUD application are Conditions 1, 13, 14, 15, and 21. These conditions either set time limits for the implementation of the planning permission (Condition 1) or require the submission and approval of certain details before development can commence (Conditions 13, 14, 15, and 21). The requirements of these conditions are summarised below and their specific wording is set out in **Appendix 1**:

- Condition 1 requires the development to have begun before within 3 years from the grant of planning permission, i.e. before 16 June 2026.
- Condition 13 states that no development, including any site preparation, demolition, scrub / hedgerow clearance or tree works / removal shall commence or be undertaken on site until a protected species mitigation licence, or written confirmation from Natural England that a licence is not required, has been submitted to and agreed in writing by the local planning authority.
- Condition 14 states that no development shall take place until details of the provisions to be made for building dependant species of conservation concern, artificial bird nesting boxes and artificial bat roosting sites have been submitted to, and approved in writing by the local planning authority.
- Condition 15 states that no part of the development permitted shall commence until a scheme for the construction of the off-site works (setback of the retaining wall to the north of the existing access) of highway mitigation has been submitted to and approved by the local planning authority.
- Condition 21 states that no work to the application buildings, including any clearance / demolition or preparation works shall take place until the implementation of a programme of archaeological building recording to level 3 has



been secured in accordance with a written scheme of investigation that shall first have been submitted to and agreed in writing by the local planning authority.

- 1.4 The other conditions on the decision notice not listed above either require the submission and approval of information prior to the occupation of the dwellings approved by the planning permission or define the approved development (such as by reference to the approved plans).
- 1.5 Condition 15 has been discharged by discharge of condition application ref: 3/2023/0892 on 25 April 2024, with the works to amend / create visibility splays at the access completed in April 2025. At the same time, passing places approved by the original planning permission (the location and number of which were varied by Non-Material Amendment Application ref: 3/2024/0017 on 4 April 2024) were also created on the access, and engineering operations to widen the access were undertaken. Further details of these works are provided in Section 3 of this Statement.
- 1.6 Conditions 13, 14, and 21 have not yet been discharged. A non-material amendment (NMA) application (ref: 3/2026/0199) has recently been submitted to amend the wording of the condition to allow the highway mitigation works required by Condition 15 and the works relating to the widening of the access and creation of passing places to be implemented prior to the discharge of Conditions 13, 14, and 21. At the time of writing, the NMA application has not been determined.
- 1.7 Ahead of submitting NMA application ref: 3/2026/0199 advice was received from the local planning authority by email on 11 March 2026 confirming that Condition 13, 14, and 21 can be amended through an NMA application to allow the access works to take place before those conditions are discharged. A copy of this email is attached at **Appendix 2**.

## **2.0 LEGISLATIVE BACKGROUND AND CASE LAW**

### **Legislation**

- 2.1 The legislation of most relevance to this CLEUD application is the Town and Country Planning Act 1990 (as amended) (hereafter referred to as "The 1990 Act"), and in particular, Sections 55, 56, and 191 of The 1990 Act.



2.2 Section 55 defines “development” as:

*“.....‘development’ means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of any buildings or land.*

*For the purposes of this Act ‘building operations’ includes:*

*(a) Demolition of buildings;*

*(b) Rebuilding;*

*(c) Structural alterations of or additions to buildings; and*

*(d) Other operations normally undertaken by a person carrying on business as a builder.”*

2.3 It should also be noted that Section 336 of The 1990 Act, which sets out how various parts of the 1990 Act should be interpreted, states that “engineering operations” include *“the formation or laying out of means of access to highways”*. It is therefore clear that the formation of an access, or engineering operations required to alter an access, are “development” under Section 55 of The 1990 Act.

2.4 Section 56 relates to when “development”, as defined by Section 55, can be considered to have begun:

*“..... development of land shall be taken to be initiated:*

*(a) If the development consists of the carrying out of operations, at the time when those operations are begun.....*

*..... development shall be taken to be begun on the earliest date on which any material operations comprised in the development begins to be carried out.*

*‘material operation’ means [inter alia]*

*(d) Any operation in the course of laying out or constructing a road or part of a road”*

2.5 Section 191 of The 1990 Act provides a mechanism for seeking formal confirmation of the lawfulness of a development:

*“If any person wishes to ascertain whether;*

*(a) Any existing use of buildings or other land is lawful;*

*(b) Any operations which have been carried out in, on, over or under land are lawful, or*



*(c) Any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful;*

*He may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.”*

### **National Planning Practice Guidance**

2.6 The National Planning Practice Guidance (PPG) provides guidance from the Government on many aspects of the planning system. In relation to applications for CLEUD made under Section 191 of The 1990 Act, paragraph reference ID 17c-006-20140306 of the PPG provides guidance on how decisions should be made, stating:

*“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”*

### **Case Law**

#### ***What constitutes the commencement of development?***

2.7 The Judgement in *East Dunbartonshire Council v Scottish Secretary of State & Mactaggart Mickel Ltd*<sup>1</sup> in 1999, and more recently in *Riordan Communications Ltd v South Bucks DC*<sup>2</sup> in 2000, have set out well established principles for considering when development may have lawfully commenced. These principles have been cited in many appeal cases since these Judgements were made. One example is in the determination of an appeal at “*barn at St Giles on the Heath, Launceston*” in November 2023<sup>3</sup>. Paragraph 6 of the appeal decision refers to these principles:

*“The Council’s concern that the works were not genuinely undertaken to carry out the development stems, I suspect, from the Courts previously having insisted that works must not be carried out simply to keep a permission alive [Malvern Hills DC v SSE 1982 and Thayer v SSE 1992]. However, more recent case law [the East Dunbartonshire and Riordan Judgments] has established that the appropriate test under s.56 [of The 1990 Act] is objective, rather than subjective, and that the intention of the person carrying out the operations is irrelevant. The East Dunbartonshire Judgement confirms that the objective test would be satisfied by firstly considering whether the work had been done in accordance with the relevant planning permission, and secondly whether it was more than de minimis.”*

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<sup>1</sup> *East Dunbartonshire Council v Scottish Secretary of State & Mactaggart Mickel Ltd* [1999] 1 PLR 53

<sup>2</sup> *Riordan Communications Ltd v South Bucks DC* [2000] JPL 594

<sup>3</sup> Planning Inspectorate Appeal Ref: APP/W1145/X/22/3312845



2.8 In short, for a development to be deemed lawfully commenced, the work undertaken must be a relevant operation in accordance with Section 56 of The 1990 Act, must have been undertaken in accordance with the planning permission, and must be more than *de minimis*.

2.9 Being more than *de minimis* does not mean that the operations need to be extensive. The following case law are just some examples of what works have been deemed to represent the lawful commencement of development. These examples demonstrate that the Courts have long acknowledged that the list of material operations in Section 56 of The 1990 Act is not exhaustive:

- *High Peak Borough Council v SoS and Courtdale Developments Ltd*<sup>4</sup> – the digging of a trench using a mechanical digger to contain foundations, which was then backfilled (for the safety of children and animals)
- *Malvern Hills DC v SoS and Robert Barns and Co Ltd*<sup>5</sup> – the marking out of a proposed road with pegs
- *Brent London Borough Council v SoS and Ashia Centur Ltd*<sup>6</sup> – the Court of Appeal upheld a High Court Judgment that the removal of some soil and the treating of the cleared space with a chemical that bonded the soil together to form the base for the road (as part of the formation of an access) was a relevant operation to commence development.

***Whether development is in accordance with a planning permission and its conditions***

2.10 Development approved by a planning permission must take place in accordance with that planning permission, including the requirements of the planning permission's conditions, if it is to be considered lawful.

2.11 Development undertaken prior to the discharge of a “pre-commencement” condition – that is a condition that requires the submission and approval of matters prior to the commencement or start of development – can be unlawful; however, the Courts have determined that this is not always the case.

2.12 The Judgement in *Whitley v Secretary of State for Wales*<sup>7</sup> held that if an action towards the commencement of development contravened a pre-commencement condition, that action

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<sup>4</sup> *High Peak Borough Council v SoS and Courtdale Developments Ltd* [1981]

<sup>5</sup> *Malvern Hills DC v SoS and Robert Barns and Co Ltd* [1982] JPL 439

<sup>6</sup> *Brent London Borough Council v SoS and Ashia Centur Ltd* [2009]

<sup>7</sup> *Whitley v Secretary of State for Wales* [1992] 634 P&CR 296

cannot be described as commencing development.

2.13 The later Judgment in *R (Hart Aggregates Ltd) v Hartlepool BC*<sup>8</sup> took this further, however. The Judgement held that:

- The planning condition (pre-commencement condition) must be phrased as an express requirement or prohibition that makes it clear that the actual start of development is conditional on the condition being satisfied (i.e. “*development must not commence until.....*”).
- The condition must “go to the heart” of the permission. This means that the breach of planning conditions, even pre-commencement conditions, that relate to matters that are not fundamental to the acceptability of the proposed development does not necessarily mean that the development undertaken is unlawful and, in those instances, development can be lawfully commenced ahead of the discharge of such conditions.

2.14 The Judgment in *Bedford Borough Council v Secretary of State and Aleksander Stanislaw Murzyn*<sup>9</sup> in 2008 provides useful interpretation of the principles established in *Whitley* and *Hart*. The case focused on whether breaching a pre-commencement planning condition renders a development as unlawful. The following quotes from the Judgement summarise the factors that should be considered, on a case-by-case basis, to determine what the impact is if a pre-commencement condition has been breached.

*“A distinction must be drawn..... between (a) a condition which in truth merely stipulates that something must be done before the time when the development commences, and (b) a condition which in truth goes further and stipulates that the development cannot commence unless the condition is fulfilled. A breach of condition (a) enables the local authority prima facie to take enforcement action to remedy the non-performance of the stipulated action, but condition (b) if broken renders the development unlawful and is therefore subject potentially to enforcement action itself, i.e. cessation of the operation in question, if it is quarrying, or demolition of the house or prevention of further work on it, if it is permission to build. This distinction mirrors the two different forms of breaches of planning control set out in Section 171(A)(1)(a) and (b) of the 1990 Act.....”*

*“The Whitley principle is only engaged where there is a breach of a class (b) condition. That is because only here can the development as a whole properly be described as unlawful, and it is only if the development as a whole is unlawful that its commencement is deprived of effect for the purpose of running out of time.”*

*“It is thus necessary to examine and construe the condition carefully, to see whether it is a class (b) condition or, to put it another way, a ‘true’ condition precedent.....”*

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<sup>8</sup> *R (Hart Aggregates Ltd) v Hartlepool BC* [2005] EWHC 840 Admin

<sup>9</sup> *Bedford Borough Council v Secretary of State and Aleksander Stanislaw Murzyn* [2008] EWCH 2304 (Admin)



*Where, therefore, there is a condition which is manifestly not about the essential subject matter of permission, the fact that it has to be fulfilled before the relevant operation commences does not mean that the essential operation cannot begin without its fulfilment.”*

### **3.0 CASE FOR THE APPLICANT**

3.1 The case for the Applicant is that Conditions 13, 14, and 21 do not “go to the heart” of the planning permission and therefore are not true conditions precedent. Therefore, the operations undertaken to create the visibility splays and passing places (hereafter referred to as “the access works”) would not be unlawful and will have lawfully implemented the planning permission.

3.2 Alternatively, once NMA application ref: 3/2026/0199 to amend Conditions 13, 14, and 21 to allow the access works to be undertaken prior to the discharge of those conditions has been approved, because there would no longer be a requirement to discharge Conditions 13, 14, and 21 prior to the access works taking place, the permission will have been lawfully implemented.

3.3 Details are provided below of the access works undertaken, including a justification for why they are considered “material operations” that would implement the proposed development in accordance with Section 56 of The 1990 Act, and a justification for why conditions 13, 14, and 21 are not considered to be “true” conditions precedent.

#### **Access Works Undertaken**

3.4 The works undertaken at the access have comprised the following:

- The widening of the existing access track by 70 cm to create a wider road access to the former barns. These works included the use of an excavator.
- The installation of 2 No. passing places on the eastern side of the access road. The passes places measure 5m by 2m. The work in creating the passing places included the use of an excavator.
- The reduction in height of a wall at the junction of the access with the private road to the north and the relocation of a fence at that junction to create visibility splays. This included the use of hydraulic post knocker and the installation of concrete in the post holes for fencing posts.

3.5 The above work was completed in April 2025, clearly before the expiry date of the planning permission in Condition 1.



- 3.6 United Utilities employed a construction contractor / builder to undertake those works. Evidence demonstrating the above work has taken place is provided in the photographs in **Appendix 3**.
- 3.7 As referred to in Section 2 of this Statement, Section 56 of The 1990 Act states that development is taken to be begun on the earliest date on which any material operation begins to be carried out and that a material operation can include “*any operations in the course of laying out or constructing a road or part of a road*”. Notwithstanding this, as explained in paragraph 2.9 of the Statement, the Courts have long acknowledged that the list of material operations in Section 56 is not exhaustive and that there are numerous operations that can be considered a material operation.
- 3.8 The creation of the passing places and widening of the existing access track to create an access road that is suitable to provide access to the approved 4 dwellings is considered to be a material operation implementing the planning permission. The access road was widened along its length, which is approximately 90m, and two passing places have been created which measure 5m by 2m. The work undertaken required the appointment of a building contractor and the use of specialist equipment (as referred to above). These works are therefore clearly more than *de minimis*, being an engineering operation which is classed as “development” under Section 55 of The 1990 Act.
- 3.9 It should also be noted that the access works undertaken are not permitted development. Whilst permitted development rights do exist for the formation of access onto non-classified roads, those permitted development rights only apply when the formation of the access is required in connection with other permitted development<sup>10</sup>. This is not the case in this instance and the access works are development which would require planning permission in their own right, that planning permission being granted by planning permission ref: 3/2023/0056.
- 3.10 It is therefore considered clear that access works undertaken are a material operation to commence the development approved by planning permission ref: 03/2023/0056. Consideration is now required as to whether the commencement of the development ahead

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<sup>10</sup> Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)



of discharging Conditions 13, 14, and 21 is lawful.

**Whether Conditions 13, 14, and 21 are “True Conditions Precedent”**

3.11 As set out in Section 2 of this Statement, the principles enshrined in *Whitley* and *Hart* require the consideration of the following 2 matters when considering if a condition is a “true condition precedent”:

- (a) The condition wording – does the condition just require something to be undertaken or agreed prior to development commencing, or does it explicitly prevent development from taking place until after the condition has been discharged; and
- (b) Do the requirements of the condition “go to the heart” of the planning permission? i.e. do they relate to something that is essential to the subject matter of the planning permission and, as a result of the work or operation undertaken, would the breach of the condition mean that the development as a whole is unlawful? Only if the answer to these questions is yes, does the condition go to the heart of the permission.

3.12 A true condition precedent only exists if the wording explicitly prevents development from taking place prior the condition being discharged **and** if the condition goes to the heart of the permission. Even where the condition wording explicitly prevents development from taking place before discharge of the condition, *Hart* confirms that if the condition does not go to the heart of the planning permission, the development undertaken can still be considered lawful. Both of the above tests therefore need to be satisfied for a condition to be considered a true condition precedent.

3.13 We consider the implications of the above for Conditions 13, 14, and 21 below.

***Condition 13***

3.14 The wording of condition 13 does explicitly prevent development from taking place until the details / information required by the condition have been submitted and agreed with the local planning authority:

*“..... no development, including any site preparation, demolition, scrub / hedgerow clearance or tree works / removal shall commence or be undertaken on site until.....”*

3.15 However, as set out above, this does not necessarily mean that the condition is a true condition precedent. Consideration is needed as to whether the requirements of the condition go to the heart of the planning permission, which in this case, it is not considered they do.



- 3.16 Condition 13 relates to work / operations at the site which would (or may) require a protected species license from Natural England. The overarching purpose of the condition is therefore to prevent works that may harm or disturb protected species from taking place ahead of the receipt of a license from Natural England (or confirmation that one is not required). This would include works to the buildings or surrounding (which may contain bat roosts or bird nests). It is considered that the “access works” would not be an operation for which a protected species license from Natural England would be required, as they would not disturb or harm nesting birds or bats within the buildings or surrounding trees.
- 3.17 As a result, undertaking the access works ahead of the discharge of Condition 13 would not have implications, or result in harm to, the overarching aim of Condition 13 and it is not considered that such works would be unlawful if undertaken prior to the discharge of the condition. Therefore, given that some of the work / operations approved by planning permission ref: 3/2023/0056 can take place without resulting in harm to the purposes of Condition 13, it is considered that such work operations (such as the access works) would not affect matters that are essential to the subject matter of the planning permission.
- 3.18 Therefore Condition 13 does not go to the heart of the permission and cannot be a true condition precedent.

#### ***Condition 14***

- 3.19 Condition 14 is also worded so that it explicitly restricts any development from take place before the condition is discharged:

*“No development shall take place until details of ..... have been submitted to, and approved in writing by the local planning authority.”*

- 3.20 However, the wording of Condition 14 implies that the condition specifically relates to the works to the buildings on the site, with the protected species referred to being those that are “building dependant” (i.e. those that nest or roost within buildings). The condition wording explicitly states in a numerous location that the mitigation measures to be submitted and approved to discharge the condition relate to the buildings themselves and not the surrounding site. Such references include (emphasis added):

*“The details shall be submitted on a **dwelling / building dependent** bird / bat species development site plan.....”*

*“The details shall also identify the **actual wall and roof elevations** into which the above*

*provisions shall be incorporated.”*

- 3.21 It is therefore considered to be clear that the purpose of Condition 14 is to prevent work to the buildings taking place before replacement bat and bird roosting provisions within or on the elevations of the buildings have been agreed. The access works, and other works within the site, would have no bearing on this and, if undertaken ahead of the discharge of Condition 14, other work within the site (including the access works) would not result in harm to the purpose of Condition 14. Such work would not therefore be considered to be unlawful in its own right and would not make the development as whole unlawful as there would still be the opportunity to agree bat and bird mitigation measures relating to the buildings after the access works have been implement without any harm arising to bats or birds.
- 3.22 Condition 14 is therefore also considered to not go to the heart of the planning permission and is not a true condition precedent.

### ***Condition 21***

- 3.23 Unlike Conditions 13 and 14, it is not considered that the wording of Condition 21 explicitly prevents all parts of the approved development from take place prior to the condition being discharged. It is considered that Condition 21 relates only to work to the buildings on the application site and any preparatory work related to operations to those buildings:

*“No work to the application buildings, including any clearance / demolition or preparation works shall take place until.....”*

- 3.24 If Condition 21 was intended to relate to all parts of the approved development on the application site taking place prior to the discharge of the condition, it is considered that it would have been worded in a similar manner to other conditions on the decision notice, and in particularly, similar to the wording of Condition 15, which states *“no part of the development hereby approved”*.
- 3.25 As a result, by not explicitly preventing other elements of the approved development taking place, such as the access works, prior to the discharge of the condition, Condition 21 cannot be considered a true condition precedent.

### ***Summary***

- 3.26 It is considered that none of Conditions 13, 14, or 21 can be considered true conditions precedent.

- 3.27 Whilst Conditions 13 and 14 are worded as such that they explicitly state that no development should take place prior to their discharge, the conditions do not relate to an essential subject matter of the planning permission. Rather they both relate to matters effecting the conversion works to the buildings on site only. This is the need to obtain a license to disturb or destroy bat roosts or bird nests and the measures needed to mitigate / compensate for that loss, which as explicitly stated in Condition 14 relates solely to the “building dependant” species. Therefore, by only relating to the works to the buildings themselves, because the planning permission granted consent for other operations within the site (such as the access works), these conditions are not considered to relate to the essential subject matter of the permission. There would still be the opportunity to submit and agree the details required by these conditions after the access works have been undertaken without harm arising to the purposes of those conditions. As such, it is considered that undertaking the access work ahead of the discharge of these conditions would not be unlawful, as it would not result in harm to the purposes of these conditions. As such, these conditions do not go to the heart of the planning permission and are not therefore true conditions precedent.
- 3.28 Condition 21 is worded in such a way that it is considered that it implies that the condition only relates to works to the building and not to other works approved by the proposed development. In light of that wording, the access works are considered to be capable of being undertaken prior to the submission and agreement of the details required by Condition 21 without harm arising to the purposes of the condition, and therefore such works would not be considered unlawful. As a result, Condition 21 cannot be considered a true precedent.
- 3.29 It is also important to that in discussions with the local planning authority relating to altering Conditions 13, 14, and 21 so that their wording is explicit in allowing the access works to take place prior to the conditions being discharged, the local planning authority has advised that such changes can be approved through an NMA application (see email correspondence in Appendix 2). NMA applications can only be used where changes would not be “material” and would not give rise to impacts that require a fresh determination of the essential subject matters of the application. Therefore, by confirming that Conditions 13, 14, and 21 can be amended to explicitly state that the access works can take place ahead of the discharge of these conditions, the local planning authority has acknowledged (albeit informally until NMA application ref: 3/2026/0199 has been determined) that it is possible to undertake the access works ahead of the approval of the details required by these conditions without having a



negative impact on the essential subject matter of the application. This therefore provides further justification that Conditions 13, 14, and 21 do not go to the heart of the planning permission and are not true conditions precedent.

### **Effect of NMA Application Ref: 3/2026/0199**

- 3.30 Notwithstanding the above, whilst at the time of writing NMA application ref: 3/2026/0199 has not been determined, if and when been approved, the wording of conditions 13, 14, and 21 would explicitly allow for the access works to take place ahead of the discharge of these conditions. As a result, with the access works already having been undertaken before the date that the permission expires, the planning permission has been lawfully implemented and would remain extant.

### **Summary of the Applicant's Case**

- 3.31 The Applicant's case is that the works undertaken to widen the access, create passing places along the access, and alter visibility splays are works that have implemented planning permission ref: 03/2023/0056. Whilst these works were undertaken ahead of the discharge of Conditions 13, 14, and 21, for the reasons stated above, it is not considered that these conditions go to the heart of the planning permission, and therefore they are no true conditions precedent. Therefore, the works undertaken would not be unlawful and would be a lawful implementation of the planning permission.

## **4.0 CONCLUSION**

- 4.1 This Statement supports an application for a CLEUD. It requests the issue of a CLEUD confirming that planning permission ref: 03/2023/0056 has been lawfully implemented through the undertaking of approved works to the site access. This includes the widening of the access road, the creation of passing places, and the works to create visibility splays at the site junction in accordance with the details submitted and approved through the discharge of Condition 15 of the planning permission. Such work included engineering operations undertaken to create an access to the approved dwellings. Those engineering operations were undertaken by a builder and required the use of specialist construction equipment and machinery. Such works were therefore more than *de minimis* and were a "relevant operation" under Section 56 of The 1990 Act.
- 4.2 Whilst the abovementioned works have taken place ahead of the discharge of Conditions 13, 14, and 21, it is considered that those conditions either do not go to heart of the planning



permission and / or are worded as such that they are not true conditions precedent. As such, the above mentioned works would not be unlawful and have lawfully implemented the planning permission.

- 4.3 Alternatively, an NMA application to amend Conditions 13, 14, and 21 is awaiting determination. That application will amend the conditions so that they explicitly allow the abovementioned “access works” to take place ahead of the discharge of those conditions. Therefore, on approval of the NMA application, there would be no doubt that the access works would not have been undertaken in breach of Conditions 13, 14, and 21, and therefore no doubt that they would have lawfully implemented the planning permission.



## **Appendix 1 Planning Permission Ref: 3/2023/0056 Relevant Condition Wording and Reasoning**

### Condition 1

*“The development must begin not later than the expiration of three years beginning with the date of this permission.*

*Reason: Required to be imposed by Section 51 of the Planning and Compulsory Purchase Act 2004.”*

### Condition 13

*“Notwithstanding the submitted details, no development, including any site preparation, demolition, scrub / hedgerow clearance or tree works / removal shall commence or be undertaken on site until a protected species mitigation license – or written confirmation from Natural England that this license is not required – has been submitted to and agreed in writing by the local planning authority. The actions, methods & timings included in the mitigation measures identified and the conditions of the Natural England license shall be fully implemented and adhered to throughout the lifetime of the development.*

*Reason: To ensure the protection of species / habitat protected by the Wildlife and Countryside Act 1981 (as amended) and in the interests of biodiversity and to enhance habitat opportunities for species of conservation concern / protected species and to minimise / mitigate the potential impacts upon protected species resultant from the development.”*

### Condition 14

*“No development shall take place until details of the provisions to be made for building dependant species of conservation concern, artificial bird nesting boxes and artificial bat roosting sites have been submitted to, and approved in writing by the local planning authority. The details shall be submitted on a dwelling / building dependent bird / bat species development site plan and include details of the numbers of artificial bird nesting boxes and artificial bat roosting sites. The details shall also identify the actual wall and roof elevations into which the above provisions shall be incorporated. The artificial bird / bat boxes shall be installed in accordance with the agreed details before the dwellings are first brought into use and retained thereafter unless otherwise agreed in writing by the local planning authority.*

*Reason: In the interests of biodiversity and to enhance nesting / roosting opportunities for species of conservation concern and to reduce the impact of development.”*

### Condition 15

*“No part of the development hereby approved shall commence until a scheme for the construction of the off-site works (setback of the retaining wall to the north of the existing access) of highway mitigation has been submitted to, and approved by, the local planning authority. The approved works shall be carried out in accordance with the approved details prior to first occupation of any dwelling hereby approved.*

*Reason: In order to satisfy the Local Planning Authority and Highway Authority that the final details*



*of the highway scheme / works are acceptable before work commences on site.”*

Condition 21

*“No works to the application buildings, including any clearance / demolition or preparation works shall take place until the applicant, or their agent or successors in title, has secured the implementation of a programme of archaeological building recording to level 3 as set out in ‘Understanding Historic Buildings’ (Historic England 2016). This must be carried out by an appropriately qualified and experienced professional contractor to the standards set out by the Chartered Institute for Archaeologists and in accordance with a written scheme of investigation, which shall first have been submitted to and agreed in writing by the local planning authority. A copy of the resulting report shall be submitted to the Lancashire Historic Environment Record prior to the consented development coming into use.*

*Reason: To ensure and safeguard the recording and inspection of matters of archaeological / historical importance associated with the building / site.”*



**Appendix 2 Email from Local Planning Authority Dated 11 March 2026**

## Paul Forshaw

---

**Subject:** FW: 3/2023/0056 Planning consent for Phynis Farm, Slaidburn, BB7 3AQ  
**EmailID:** 6c3ef505-1ba5-4d8c-8e75-d3afa124a764-0101450100000  
**EmailRef:** 20260324-104136-653  
**EmailType:** Outgoing  
**isConfidential:** False  
**isProjectEmail:** True  
**isReply:** True  
**ProjectNo:** LAN5089

---

**From:** Ben Taylor [REDACTED]  
**Sent:** 11 March 2026 15:47  
**To:** Ashworth, Caroline [REDACTED]  
**Subject:** RE: 3/2023/0056 Planning consent for Phynis Farm, Slaidburn, BB7 3AQ

Hi Caroline,

Having now discussed your query with my head of service her view was that the best way to move things forward would be to submit a non-material amendment application to vary the wording of conditions 13, 14 and 21 imposed on 23/0056.

The conditions in question would need to be reworded as follows:

### *Condition 13*

*Notwithstanding the submitted details, no development, including any site preparation, demolition, scrub/hedgerow clearance or tree works/removal, **save for the provision of the approved visibility splays and passing places**, shall commence or be undertaken on site until a protected species mitigation license - or written confirmation from Natural England that this license is not required - has been submitted to and agreed in writing by the local planning authority. The actions, methods & timings included in the mitigation measures identified and the conditions of the Natural England License shall be fully implemented and adhered to throughout the lifetime of the development.*

*Reason: To ensure the protection of species/habitat protected by the Wildlife and Countryside Act 1981 (as Amended) and in the interests of biodiversity and to enhance habitat opportunities for species of conservation concern/protected species and to minimise/mitigate the potential impacts upon protected species resultant from the development.*

### *Condition 14*

*No development shall take place, **save for the provision of the approved visibility splays and passing places**, until details of the provisions to be made for building dependent species of conservation concern, artificial bird nesting boxes and artificial bat roosting sites have been submitted to, and approved in writing by the Local Planning Authority. The details shall be submitted on a dwelling/building dependent bird/bat species development site plan and include details of the numbers of artificial bird nesting boxes and artificial bat roosting sites. The details shall also identify the actual wall and roof elevations into which the above provisions shall be incorporated. The artificial bird/bat boxes shall be installed in accordance with the agreed details before the dwellings are first brought into use and retained thereafter unless otherwise agreed in writing by the Local Planning Authority.*

*Reason: In the interests of biodiversity and to enhance nesting/roosting opportunities for species of conservation concern and to reduce the impact of development.*

*Condition 21*

*No works to the application buildings, including any clearance/demolition or preparation works, **save for the provision of the approved visibility splays and passing places**, shall take place until the applicant, or their agent or successors in title, has secured the implementation of a programme of archaeological building recording to level 3 as set out in "Understanding Historic Buildings" (Historic England 2016). This must be carried out by an appropriately qualified and experienced professional contractor to the standards set out by the Chartered Institute for Archaeologists and in accordance with a written scheme of investigation, which shall first have been submitted to and agreed in writing by the Local Planning Authority. A copy of the resulting report shall be submitted to the Lancashire Historic Environment Record prior to the consented development coming into use.*

*Reason: To ensure and safeguard the recording and inspection of matters of archaeological/historical importance associated with the building/site.*

Please note that the submission and approval of a NMA application as outlined above wouldn't amount to a formal recognition of the original development as having been lawfully commenced. For written confirmation of this, a Lawful Development Certificate application could also be submitted (in addition to the above, not as an alternative) to demonstrate that development commenced on site within the requisite three year time period through evidencing (by way of dated photographs / materials invoices / sworn statements) that the visibility splays and passing places were constructed prior to the 15<sup>th</sup> June 2026. This isn't something that we are specifically requesting however having written confirmation of the development having been lawfully commenced may assist you in the process of selling the site through giving your buyer peace of mind.

Please note that the observations above have been provided on the basis of the level of information submitted and the comments contained within this response represent officer opinion only, at the time of writing, without prejudice to the final determination of any application submitted.

Regards,

Ben.

---

**From:** Ashworth, Caroline [REDACTED]  
**Sent:** 10 March 2026 11:13  
**To:** Ben Taylor [REDACTED]  
**Subject:** RE: 3/2023/0056 Planning consent for Phynis Farm, Slaidburn, BB7 3AQ

 **External Email**

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Hi Ben,

I appreciate you haven't had much time to consider my enquiry, but the buyers are getting particularly twitchy. Have you been able to discuss with your Head of Service yet?

Kind Regards,

Caroline



**Caroline Ashworth**  
Property Surveyor  
Sales Team  
Asset Management  
M: [REDACTED]  
[unitedutilities.com](http://unitedutilities.com)

---

**From:** Ben Taylor [REDACTED]  
**Sent:** 04 March 2026 16:24  
**To:** Ashworth, Caroline [REDACTED]  
**Subject:** RE: 3/2023/0056 Planning consent for Phynis Farm, Slaidburn, BB7 3AQ

Hi Caroline,

Thank you for your email and I apologise for the delay in not responding to your previous email.

I will need to discuss your query with my head of service to confirm the best way forward. I will aim to respond to you as soon as possible as I appreciate that time is an important factor in this instance.

Regards,

Ben.

---

**From:** Ashworth, Caroline [REDACTED]  
**Sent:** 04 March 2026 15:28  
**To:** Planning [REDACTED]  
**Subject:** 3/2023/0056 Planning consent for Phynis Farm, Slaidburn, BB7 3AQ

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Hello,

I wonder if you can help me.

We have an urgent enquiry concerning the above planning application. The consent is due to expire on 15 June 2026, but several planning conditions, specifically Conditions 13, 14, and 21 remain outstanding. These relate to ecology and archaeological matters.

Due to the time of year, it has not been possible to carry out the required bat survey, and realistically this cannot be undertaken until May. Following that, a licence from Natural England would be required. We have agreed a sale that is currently progressing, and we had hoped to complete before 31 March 2026. However, with these conditions still unresolved, the purchasers are understandably concerned that the consent may lapse before there is sufficient time to discharge them.

The visibility splay works and passing places have been completed, and ordinarily these would constitute implementation of the planning permission. In light of this, I am seeking clarification as to whether anything can be done regarding the outstanding conditions, as my understanding is that formal commencement can only be recognised once all pre-commencement conditions have been discharged. Are you able to advise on how best to proceed in these circumstances?

I appreciate how busy you are, but given the timescales, a response at your earliest convenience would be greatly appreciated.

Kind Regards,

Caroline



**Caroline Ashworth**

Property Surveyor

Sales Team

Asset Management

**M:** [REDACTED]

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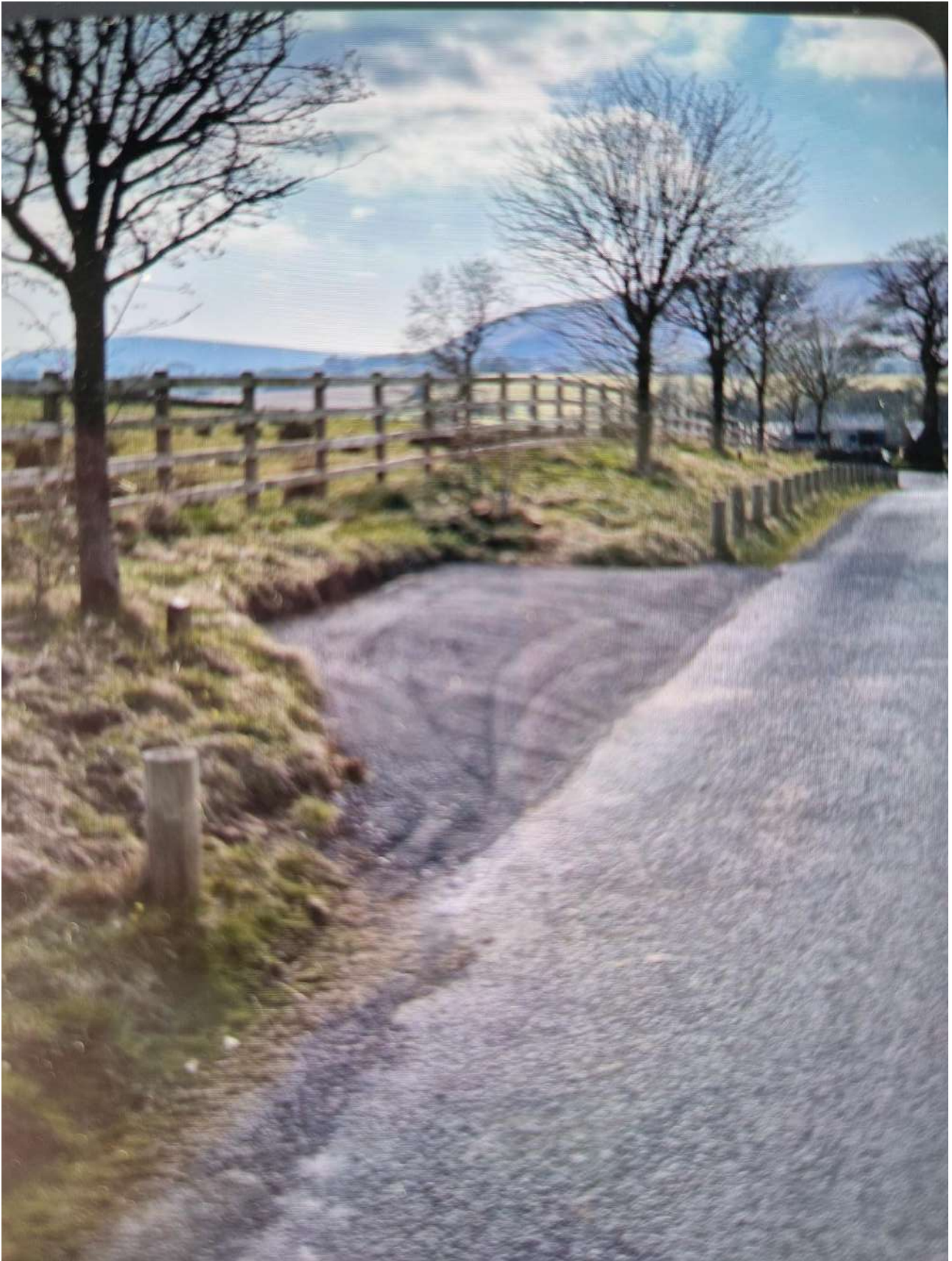
### Appendix 3 Evidence of Undertaking “Access Works”













## **Bedford**

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bedford@dlpconsultants.co.uk

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