



Appeal Decision

Site visit made on 14 February 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 23 February 2020

Appeal Ref: APP/Z5630/X/19/3224185

Seething Wells Filter Beds, Portsmouth Road, Surbiton

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Sean Reardon of Cascina Ltd against the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref. 18/16760/LDE is dated 29 October 2018.
 - The application was made under section 191(1)(b) 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is "construction of water storage and filtration infrastructure including: retaining walls to site perimeter, 7 no storage and filtration beds (including associated pipework), 3 no filter wells, flushing tanks, sluice operation buildings and associated sluices, pump house and welfare facilities, highways access to Portsmouth Road, internal roads, pathways and car parking".
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Preliminary Matters

1. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
2. Section 171B(1) of the 1990 Act as amended states that where there has been a breach of planning control consisting in the carrying out without planning permission of [operational development] no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Operations are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired¹.

¹ Section 191(2)(a) of the 1990 Act as amended.

Main Issue

3. As the Council failed to determine the application, what must be considered is whether the appellant has shown on the balance of probability that the development would have been lawful at the date of the application and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

Reasons

4. The Council states that the evidence put forward in support of the application included OS Plans dated from 1868 to 1987, Aerial Photographs from 1930 to 2018, an extract from the London Illustrated News dated 1858 and a selection of current photographs of the site. A planning statement was also submitted in support of the appellant's case, which states that the existing development was first implemented between 1848 and 1856 and that the site has remained largely unchanged since 1852.
5. The Council confirms that it is not in possession of any evidence which would reasonably contradict the appellant's case. From all that I have seen and read, there is no reason for me to disagree with the Council's position. The appellant's evidence is sufficiently precise and unambiguous.
6. Therefore, it is considered that the appellant has shown on the balance of probability that the development would have been lawful at the date of the application and was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

Conclusion

7. For the reasons given above I conclude, on the evidence now available, that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Decision

8. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operations which are considered to be lawful.

Debbie Moore

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 29 October 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has shown on the balance of probability that the development would have been lawful at the date of the application and thus was not liable to enforcement action, under section 172 of the 1990 Act, on that date, because the time for enforcement action has expired.

Signed

Debbie Moore

Inspector

Date 23 February 2020

Reference: APP/Z5630/X/19/3224185

First Schedule

Construction of water storage and filtration infrastructure including: retaining walls to site perimeter, 7 no storage and filtration beds (including associated pipework), 3 no filter wells, flushing tanks, sluice operation buildings and associated sluices, pump house and welfare facilities, highways access to Portsmouth Road, internal roads, pathways and car parking.

Second Schedule

Land at Seething Wells Filter Beds, Portsmouth Road, Surbiton.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated:23 February 2020

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Land at: Seething Wells Filter Beds, Portsmouth Road, Surbiton

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Scale: NTS

