



Appeal Decision

Site visit made on 17 March 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 27 May 2020

Appeal Ref: APP/N1920/X/19/3224200

Cedar Chalet, Kendall Hall Farm, Watling Street, Radlett, Herts WD7 7LH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development. ("LDC").
 - The appeal is made by Star Properties Ltd against the decision of Hertsmere Borough Council.
 - The application Ref 18/0934/CLE is dated 9 May 2018.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the demolition of an existing building, and the erection of a 4 bed house.
-

Decision

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

Application for costs

2. An application for costs was made by Star Properties Ltd against Hertsmere Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The purpose of the application was to seek confirmation as to the commencement of relevant works within three years following planning permission being granted on appeal in April 2015.
4. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

5. The main issue in this appeal is whether, on the balance of probability, the works carried out amounted to a material commencement of a planning permission, granted in 2015, in respect of the erection of a 4-bed house and, accordingly, whether the Council's decision to refuse to grant the LDC was well founded.

Reasons

6. In this particular instance the Council refused to issue a LDC to confirm that sufficient works had commenced to constitute implementation of the single dwellinghouse, approved on appeal ("APP/N1920/A/14/2226908") dated 23 April 2015. The Council commented, in its case report that, whilst underground drainage had been laid by 23 April 2018, being the 'material date', it was not considered that any trench dug comprised the foundations of the new dwelling to constitute a material operation in this regard.
7. Section 56, subsection 2, (4)(c) of the 1990 Act as amended indicates that a material operation means, amongst other things, the laying of any underground main or pipe to the foundations, or part of the foundations, of a building, or to any such trench as is mentioned in (4)(b) above.
8. The appellant, to illustrate the claim that commencement had taken place submitted a Site Inspection record form from 'Bureau Veritas Building Control UK' which indicates that, on 26 January 2018, a site inspection was carried out to check underground drainage which had been laid, with a new 100mm diameter pipe laid to 1 in 40 fall and bedded on shingle for implementing the said planning permission. The form makes reference to, and is accompanied by Drawing No 4 Rev D, which shows the line of the pipe, and a photograph of the works carried out. The content of the form is, though, limited, and certainly does not, in itself, give a full explanation as to the relevance of the works carried out for the purposes of the LDC application later made.
9. Further, the above plan is not that which was approved in connection with the successful appeal; that being Drawing No 4 Rev A. The subsequent revisions, B and C involved additional boundary treatment and a proposed picket fence, whereas Drawing No 4D accompanied an unsuccessful application (ref 17/2168/VOC) for a variation of conditions and also the proposed construction of a basement. This was refused by the Council in January 2018. Nonetheless, as the Council, in its case report, has not made reference to this error, nor specifically referred to Rev 4D in its decision notice, I shall treat the plan as being for illustrative purposes only.
10. Very little is needed to 'initiate development' under s56(1). In the case of *Spackman v Secretary of State and Thamesdown Borough Council* [1977] the laying of drainage pipes was held to be a 'specified operation' even though the foundations' trenches did not exist. S56(2) provides that 'development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
11. Although not submitted at the application stage the appellant has now supplemented the above inspection record with an appeal decision letter (APP/Q9495/X/11/2158400) which was in respect of a LDC that, similar to the current appeal, was concerned with whether works carried out constituted commencement of a new dwelling which had previously been granted planning permission. Here, the main parties disagreed as to whether the works carried out constituted a material commencement of the permission.
12. As in the current appeal, no foundations had been dug. Also, likewise, the trench and pipe fell short of the proposed location of the foundations. The previous Inspector commented that it would seem reasonable that the drainage trench was left short of the line of the proposed foundations to ensure no

damage would be incurred. Although the appellant has not made mention of such in the current case, this would seem to me a likely explanation in the circumstances.

13. By the judgement in *Malvern Hills DC v SSE* [1982] the Court of Appeal held that the test for commencement is not the quantum of work undertaken, but whether the work was related to the planning permission involved. However, by way of *Connaught Quarries Ltd v SSETR & East Hants DC* [2001] the beginning of a material operation under s56(2) and (4), for the purposes of keeping a permission alive, has also to be more than de minimis.
14. In the current appeal case I consider that sub-section (c) can reasonably be interpreted to mean a main or pipe which is for the purpose of serving the building permitted, and does not require the pipe to be immediately adjacent to or abutting the foundations. Here, the pipe laid was to connect the approved dwelling to the existing water supply or foul sewerage system.
15. I consider this operation to be more than de minimis and is material. Also, unlike the Council's stance taken, and having interpreted the drawings, I am not convinced that it would have been necessary, when carrying out the works claimed, for the existing building, scheduled for demolition, to have first been demolished.
16. It would appear that the decision not to issue the LDC applied for was as a result of advice provided by the Council's Building Control team who took the view that the trench dug was not related to the foundations of the new dwelling. This, though, is not the issue in hand and I can only assume that the Council's approach to the application was somewhat erroneous as to what, in terms of commencement of relevant works, would have amounted to a material operation in this regard.

Conclusion

17. For the reasons given above, as a matter of fact and degree, I find that the drainage related works carried out were material and were comprised within the 2015 planning permission. I therefore conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of the erection of a 4-bed house in accordance with the 2015 permission was not well founded and that the appeal should succeed.
18. Accordingly, I will exercise my powers under section 195(2) of the 1990 Act as amended.

Timothy C King

INSPECTOR



Lawful Development Certificate

APPEAL REF. APP/N1920/X/19/3224200

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 9 May 2018 the operations described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto, and shown edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 as amended, for the following reason:

Development commenced on the implementation of planning permission ref 18/0934/CLE within the 3 year time limit.

Timothy C King

INSPECTOR

Date: 27 May 2020

Reference: APP/N1920/X/19/3224200

First Schedule

Erection of a 4-bed house in accordance with planning permission ref APP/N1920/A/14/2226908, dated 23 April 2015.

Second Schedule

Cedar Chalet, Kendal Hall Farm, Watling Street, Radlett, Herts WD7 7LH

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
 2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
 3. This certificate applies only to the extent of the use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/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.
 4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.
-

Plan

The plan overleaf is that attached to the Lawful Development Certificate dated:
27 May 2020

by Timothy C King BA (Hons) MRTPI

**Cedar Chalet, Kendal Hall Farm, Watling Street,
Radlett, Herts WD7 7LH**

Ref: APP/N1920/X/19/3224200

Scale: Do not scale

