



Appeal Decision

Site visit made on 9 February 2021

by **A A Phillips BA(Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Appeal Ref: APP/B2355/X/20/3257581

Land at Green Street, Rawtenstall

- 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 Mr I Hunt against the decision of Rossendale Borough Council.
 - The application Ref 2020/0211, dated 12 May 2020, was refused by notice dated 6 July 2020.
 - The application was made under section 191(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 commencement of construction of 1 detached dwelling approved under application 2016/0143.
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Decision

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

Application for costs

2. An application for costs was made by Mr I Hunt against Rossendale Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the Council's refusal to grant a certificate of lawful development in respect of the commencement of construction of 1 detached dwelling was well-founded. In this case that turns on whether the works that have been carried out constitute the commencement of development.

Reasons

4. In an appeal relating to a LDC the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
5. Full planning permission was granted on 31 August 2016 under reference 2016/0143 for the erection of 1 detached dwellinghouse including parking and gardens at Land off Green Street, Rawtenstall subject to conditions. The first condition is the standard time limit, stating that the development shall be

begun before the expiration of three years from the date of the permission. The only pre-commencement condition related to a landscaping and boundary treatment plan and was discharged under reference 2018/0445 on 11 September 2018. There is no dispute that the appellant has provided sufficient evidence that a trench was dug and a plastic pipe laid on the appeal site on 8 April 2019, constituting operational development. Consequently, there is no dispute that the works described were carried out within three years of the date of the planning permission.

6. What actually constitutes a start of development is set out in s56 of the Act and for the purposes of implementing a planning permission the relevant date is the date on which a "material operation" is carried out. According to s56(4) in sub-section 2, a "material operation" includes:

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

(c) 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 paragraph (b)"

Therefore, in this case the key question is whether the works carried out on 8 April 2019 constitute a "material operation" under (c).

7. I have noted that the Council's Building Control team has been consulted, but there is nothing in law that requires something to benefit from building control approval to constitute a "material operation" for the purposes of the Act. Indeed, they are entirely separate processes.
8. Case law¹ has established that the threshold for what is deemed to be material operations is low, where the marking out of a line and the width of a road with pegs amounted to "material operations" within s56(4)(d). Furthermore, the case of *Spackman*² concerned whether or not material operations were carried out for the construction of a residential dwellinghouse. In that case no foundations had been laid and the works that had been carried out included a partially constructed soakaway and drainage trenches in each of which had been laid piping leading to the soakaway. It was accepted that the soakaway was approximately 35 feet from the nearest soakaway shown on the approved plans, but nevertheless the court held that underground drainage works that were no longer visible without excavation may constitute the commencement of development even where the foundations or trenches themselves referred to in s56(4) have not yet been created. The Council accepts the principle of the *Spackman* case.
9. The Council has brought into question that there is no evidence that the works carried out have been done so in accordance with an approved drainage system leading to the foundations or otherwise. The original planning permission approved under reference 2016/0143 did not require the submission of a drainage scheme and therefore there is no drainage scheme. It is evident to me that the approved permission is full planning permission for the construction of a single dwelling and the development requires drainage. In accordance with case law³ the works are within the scope of what is allowed

¹ Malvern Hills DC v SSE & Barnes and Co [1982] JPL 439

² Spackman v SSE and Another [1977] 33 P. & C.R. 430

³ R. v Basildon DC Ex p. Martin Grant Homes Ltd [1987] 53 P. & C. R. 397

by that permission since there is no condition relating to a drainage scheme and the works that have been carried out are necessary and reasonable for the implementation of the permission and were incorporated within the general grant of consent. Although I understand that no plan showing the position of the trench and pipe in relation to the approved dwelling was submitted with the application for a LDC, the location of the works is clear from the photographs dated 8 April 2019 which show the relation to other buildings and features in the vicinity.

10. The Council also contends that the evidence shows a trench and pipe so short and requiring so little excavation that it would be more usually regarded as de minimis. However, the threshold for works is low and in this case the works were clearly undertaken using a mechanical digger and the trench is approximately 5 metres in length and 1 metre deep. Consequently, it cannot be said that the works which the Council itself describes as a "material operation" are de minimis.
11. As such it is my view that the evidence before me demonstrates that the works that have been carried out; namely the material operation of digging of a trench and laying a pipe, fall within what constitutes a start of development as set out in the Act. Therefore, the development in question has lawfully commenced.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the commencement of construction of 1 detached dwelling approved under application 2016/0143 was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

A A Phillips

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 12 May 2020 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 digging of a trench approximately 5 metres long and about 1 metre deep, installing a plastic drain pipe in the bottom of the trench leading from the road towards where the dwelling is to be sited, and filling in the trench with small stones constitute a material operation sufficient to be defined as the commencement of construction of 1 detached dwelling approved under application 2016/0143.

Signed

A A Phillips
INSPECTOR

Date: 18 February 2021

Reference: APP/B2355/X/20/3257581

First Schedule

Commencement of construction of 1 detached dwelling approved under application 2016/0143.

Second Schedule

Land at Green Street, Rawtenstall

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /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 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 18 February 2021

by **A A Phillips BA(Hons) DipTP MTP MRTPI**

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Scale: Do not scale

