



Appeal Decision

Site visit made on 7 December 2021

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

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

Appeal Ref: APP/W4223/X/21/3278310

Land at Station Road/Harrop Green Lane, Diggle, Oldham OL3 5LJ

- 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 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 Alan Broadbent against Oldham Metropolitan Borough Council.
 - The application Ref CEU/346210/21) is dated 31 January 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is operational land used in the development of Diggle Station and its approach road.
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Decision

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

Main Issue

2. The main issue is whether on the balance of probabilities the appellant has demonstrated that the land in question was part of the railway undertaker's ownership prior to 1968 for the purposes of establishing its operational land status under section 263 of the Act as amended and that it was used in the development of Diggle Station and its approach road.

Reasons

3. 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.
4. The appeal site is a grass and shrubbed sloping embankment to the north west of Harrop Green Lane which adjoins the rear gardens of residential properties on Clydesdale Rise and Fatherford Close. The appellant's case is that the land comprises operational land in relation to a statutory undertaker having been held in the ownership by a railway company historically. It is my understanding that the land was purchased from the railway undertaker in 1997.

5. Section 263 of the Act defines “operational land” as land which “is used for the purpose of carrying on their undertaking; and land in which an interest is held for that purpose”. Section 264 of the Act sets out circumstances where land is to be treated as not being operational land and narrows the categories of operational land defined in s263. It excludes land acquired by the statutory undertaker since 6 December 1968, unless it has planning permission for operational development. Land acquired by a statutory undertaker prior to 1968 became operational land by virtue of its acquisition, or if land is used for the purpose of carrying out their undertaking.
6. Since the dismissal of a previous appeal with respect to a similar application for a LDC the appellant has acquired further evidence from Network Rail which comprises a response to a Freedom of Information request, an extract copy of original railway deeds and a plan acquired from Parliamentary Archives.
7. Network Rail has stated in correspondence that The Huddersfield and Manchester Railway and Canal Company and The London and North Western Railway Company purchased land in this location in 1847 and 1886 respectively. Network Rail has stated that it was “acquired most likely to construct the railway for use or to be operational” and that “it seems unlikely that the land bought at this time by the private railway companies would be for any other reason other than for operation of the railway”. Evidence of the 1847 sale, including an extract from the deed of sale and a plan, has been submitted.
8. The evidence confirms that the appeal land is part of the land acquired from Mrs Mary Finn and others by the Huddersfield and Manchester Railway and Canal Company on 18 February 1847. There is no documentary evidence of the 1886 purchase referred to by Network Rail. The appellant contends that an additional undated plan submitted shows station development which had been carried out by virtue of the Huddersfield and Manchester Railway Act 1847 and the Railway Clauses Consolidation Act 1847. The land shown on the second plan does show part of the appeal land shaded in red but there is insufficient evidence that the land in question relates specifically to station development or its associated approach road.
9. The evidence before me indicates that the land was acquired by the railway company for uses associated with the development of the railway and I cannot see why it would have been purchased for any other reason. Consequently, based on the evidence now before me and on the balance of probabilities it has been demonstrated that the land the subject of this appeal was part of the railway undertaker’s ownership before 1968 for the purposes of establishing its operational land status under section 263 of the Act.
10. However, the precise description of the use for which the certificate was sought relates to land used in the development of Diggle Station and its approach road. Whilst the 1847 land acquisition appears to have been for railway operations, there is insufficient evidence that it was specifically for the development of the station and its approach road. Without more detailed evidence about the purposes for which the land was purchased by the Huddersfield and Manchester Railway and Canal Company or evidence of how it was specifically used for operational purposes I cannot conclude on the balance of probabilities that the land was used in the development of Diggle Station and its approach road.

11. The Railway Clauses Consolidation Act 1845 to which the appellant has referred may have given the railway company the right to execute works for the purpose of constructing the railway and other operations on the land but there is no evidence that it did so. S191(4) of the Act allows for the modification of the description of the existing use and I may exercise this power on appeal and issue a LDC for any use or development that is shown to be lawful on the facts and evidence, rather than refuse a certificate. However, the description should be modified with care since the power given under s191(4) is discretionary. Since in this case the land was acquired by the railway company before 1968 the appellant has demonstrated that it is operational railway land I will modify the description of the existing development and issue a LDC accordingly.

Conclusion

12. 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.

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 31 January 2021 the use 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, was 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 demonstrated that the Land was purchased by the Huddersfield and Manchester Railway and Canal Company before 1968 and according to Section 263 of the Act became operational land by virtue of its acquisition.

Signed

A A Phillips

INSPECTOR

Date: 14 January 2022

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First Schedule

Operational railway land.

Second Schedule

Land at Station Road/Harrop Green Lane, Diggle, Oldham OL3 5LJ

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: 14 January 2022

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

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Scale: Do not scale

