
Appeal Decision

Site visit made on 8 March 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 06 April 2022

Appeal Ref: APP/V0728/W/22/3290514
37A & 37B Lord Street, Redcar TS10 3HN

- 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 L Blackburn against the decision of Redcar & Cleveland Borough Council.
 - The application Ref R/2021/0261/CL, dated 25 March 2021, was refused by notice dated 6 January 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is to confirm that planning permission R/2004/739/FF is still extant for erection of two dwellings.
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Decision

1. The appeal is allowed.

Preliminary Matters

2. The description of the development varies between the application form and the subsequent documents. I have used the variation given on the appeal form as it describes the development more concisely.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

4. Planning permission R/2004/739/FF (the 2004 permission) was granted on 16 September 2004 for the demolition of existing buildings at the appeal site and the construction of two new dwellings.
5. The 2004 permission was subject to two conditions, the first a standard five year commencement condition, and the second relating to external materials. Condition 2 said: *'Details of materials to be used on the external elevations of the development shall be submitted to and agreed in writing by the Local Planning Authority prior to the development being commenced.'*
6. The appellant seeks to establish that the 2004 permission remains extant. He relies firstly on the argument that the demolition work amounted to the commencement of works, with the effect that the permission was started and

may still be implemented. From the evidence before me, it appears that the demolition works took place within the five year life of the permission, and this point is not disputed by the Council.

7. Turning then to Condition 2, the Council state that there is no written confirmation of the materials being agreed within what they describe as an otherwise complete file. The appellant does not dispute this evidence, but argues that the condition was effectively discharged by way of a verbal agreement between the 2004 applicant, Mr E Bennett, and a planning officer.
8. Whilst I have taken these arguments into account, a fundamental element of my consideration is the wording and status of the condition itself. Conditions are subject to the policy tests which are set out in paragraph 56 of the National Planning Policy Framework. The six tests are that conditions should only be imposed where they are: 1) necessary; 2) relevant to planning; 3) relevant to the development to be permitted; 4) enforceable; 5) precise; and 6) reasonable in all other respects. Each of these tests needs to be satisfied.
9. Crucially, when assessed against these tests, I find Condition 2 to be unenforceable. This is because, whilst it requires materials to be agreed, there is nothing in the condition that requires that the agreed materials should be used on the development. In other words, the condition lacks an implementation phase.
10. In those circumstances I consider that the condition is invalid and as such it cannot be a 'condition precedent' going to the heart of the planning permission granted in 2004.

Conclusion

11. For the reasons above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful development 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 and grant such a certificate.

Elaine Gray

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 25 March 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black 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:

The operation was permitted by virtue of planning permission – reference number R/2004/739/FF dated 16 September 2004 - which is still extant, the development having lawfully commenced at some date in 2004.

Signed:

Elaine Gray

INSPECTOR

Date: 06 April 2022

Reference: APP/V0728/W/22/3290514

First Schedule

Demolition of existing buildings and erection of 2(No) dwellings.

Second Schedule

Land at 37A & 37B Lord Street, Redcar TS10 3HN

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

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

This is the plan referred to in the Lawful Development Certificate dated: 06 April 2022

by Elaine Gray MA(Hons) MSc IHBC

Land at: 37A & 37B Lord Street, Redcar TS10 3HN

Reference: APP/V0728/W/22/3290514

Scale: Not to scale

