



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 08 September 2022

Appeal Ref: APP/J0540/X/22/3297686

1302 Lincoln Road, Peterborough PE4 6LN

- 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 refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Salvatore Raucci against the decision of Peterborough City Council.
 - The application Ref 21/01687/CLE, dated 26 October 2021, was refused by notice dated 17 January 2022.
 - The application was made under section 191(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is commencement of the works in relation to application number 14/01368/FUL (construction of new 2 storey, 2 bedroomed house with addition of vehicle access).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 appellant'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.
3. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. 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.
4. Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason). The application sought confirmation that the construction of a two storey, two bedroom house with vehicular access¹ had begun within three years of the date permission was granted, in accordance with condition 1 of that permission.

¹ Approved under planning permission 14/01368/FUL dated 19 December 2014.

5. The main issue is whether the Council's refusal to issue an LDC was well-founded.

Reasons

6. Section 56 of the 1990 Act concerns the "time when development begun". It states in subsection (1)(a) that development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations are begun. Subsection (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.
7. Section 56(4) provides that "material operation" means— (a) any work of construction in the course of the erection of a building; (aa) any work of demolition of a building; (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); (d) any operation in the course of laying out or constructing a road or part of a road; (e) any change in the use of any land which constitutes material development.
8. The appellant says that the works were commenced on site with the excavation of footings, which were inspected by an approved inspector for Building Regulations purposes on 31 October 2017 and, at that stage, all pre-commencement conditions had been satisfied. A letter from Owl Building Control Solutions, dated 22 October 2021, confirms the inspection of a foundation trench and states the works were considered commenced according to the Building Regulations 2010.
9. Despite this letter, the supporting evidence is very limited. The appellant has submitted a location plan and several undated photographs, none of which show the trench with a sufficient degree of clarity. The Council's evidence suggests that a trench had been dug around the time described but was later filled in. I have no details of the location, extent, or purpose of the trench. This is important since I must be satisfied that the works were done in accordance with the relevant planning permission and were material as a matter of fact and degree. The letter from the approved inspector is insufficient since it lacks the necessary clarity. Moreover, commencement for Building Regulations purposes does not necessarily show that development was begun in line with Section 56.
10. Section 56 sets an objective test and the intention of the person carrying out the development is not relevant. Nonetheless, I simply do not have enough evidence to make an informed finding, for example, the approved plans and dated photographs showing the trench clearly, and how it relates to the planning permission. It is not enough for a trench to be dug anywhere on the site. It must be shown to be connected with the relevant planning permission, and that it comprises a 'material operation; as so defined.
11. The appellant's evidence is imprecise and ambiguous. It does not show on the balance of probabilities that the construction of a two storey, two bedroom house with vehicular access had begun within three years of the date permission was granted, in accordance with condition 1 of that permission.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of commencement of the works in relation to application number 14/01368/FUL (construction of new 2 storey, 2 bedroomed house with addition of vehicle access) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Debbie Moore

Inspector