



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/W1525/X/22/3300403

16 Victoria Road, Chelmsford, Essex CM1 1NZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jengiz Ali (Oakley South Ltd) against the decision of Chelmsford City Council.
 - The application ref 22/00139/CLEUD, dated 24 January 2022, was refused by notice dated 22 April 2022.
 - 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 confirmation that planning permission has been lawfully commenced in accordance with section 56 of the Town and Country Planning Act 1990
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Decision

1. The appeal is dismissed.

Background and procedural matters

2. The description of the development for which an LDC is sought omits reference to the relevant planning permission. From the submissions, it is clear that the appellant sought confirmation that the construction of the development proposed by planning permission 06/01523/FUL (the 2006 permission) had commenced within three years of the date permission was granted, in accordance with condition 1 of that permission.
3. The 2006 permission was granted by notice dated 27 September 2006. The development proposed was described as a 'rear extension to the existing building for existing uses (amendment to permission ref 05/02274/FUL to include lift housing)'. Condition 1 of the 2006 PP states that "The development hereby permitted shall be begun before the expiration of three years from the date of this permission."
4. Section 191(4) of the Town and Country Planning Act 1990, as amended (the 1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, the planning merits of the development are not relevant to this appeal.

5. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the development described would have been lawful on the date on which the application was made.

Main Issue

6. This is whether the council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the development approved pursuant to the 2006 permission has been lawfully commenced in accordance with section 56 of the 1990 Act.

Reasons

7. The appeal building has a mixed use which incorporates a restaurant and offices. The appellant's view is that the installation of the multi services electrical main inside the existing building and excavation of the highway to facilitate the installation of the electrical point would have constituted a commencement of the approved scheme under the 2006 permission. The new multi services electrical main is stated as having been installed in January 2008. Its purpose is said to be to accommodate the extended building as well as offer the option of providing up to 24 separate supplies for the multi occupiers of the commercial building.
8. Where the works carried out are development and the development carried out is comprised in the permission there is little required to initiate or begin development under section 56(1) of the 1990 Act. Section 56(2) further clarifies that development shall be taken to be begun on the earliest date on which any material operation begins to be carried out. Even where works are undertaken solely with the objective of keeping a permission alive, when the developer had no intention at that time to proceed, can be enough to initiate development comprised in the permission. The appropriate test under section 56 of the 1990 Act is objective; the intention of the person carrying out the development is not relevant. The question is whether what was done was for the purpose of the development to which the permission related and was material in the sense of not being *de minimis*.
9. From the evidence before me, I have no reason to doubt that a new multi services electrical main has been installed within the existing building and that it was installed in January 2008. Excavations within the highway would have been required to enable the connection and the connection can be seen in the appellant's photographs. While these works have been shown to have been carried out within the perimeter of the land covered by the 2006 permission, and within three years of the date of the permission having been granted¹, the question is whether they were comprised in the permission granted and if so, were they material operations.
10. Its purpose is said to be to accommodate the extended building as well as offer the option of providing up to 24 separate supplies for the multi occupiers of the commercial building. The appellant states that the multi services electrical main remains largely unused. Regardless of how it has been used, there is no evidence before me to demonstrate that the extension itself necessitated the provision of a new main, rather the evidence suggests that the main was

¹ 27 September 2006

provided for another primary purpose, the provision of separate supplies for the various occupiers of the existing building.

11. Overall, the evidence is not sufficiently precise and unambiguous to support the appellant's argument. Consequently, on the balance of probabilities, I am not persuaded that the installation of the multi services electrical main was comprised in the development, and so cannot have been a material operation for the purposes of section 56 as a matter of fact and degree.

Conclusion

12. For the reasons given above, I conclude that the council's refusal to grant an LDC in respect of commencement of the works in relation to application number 06/01523/FUL (construction of a rear extension to the existing building (amendment to permission ref 05/02274/FUL to include lift housing)) was well-founded. Therefore, the appeal should not succeed. Accordingly, I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR