



Appeal Decision

Site visit made on 27 February 2023

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Appeal Ref: APP/W4223/X/22/3297067

Land At Station Road/ Harrop Green Lane , Diggle, Oldham, Lancashire , OL3 5LJ, 400658, 408045

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended 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 Mr Alan Broadbent against Oldham Metropolitan Borough Council.
 - The application ref CEA/348450/22 is dated 8 February 2022.
 - The application was made under section 192(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 the proposed development of a 3 bedroomed stone build dwelling with turning and parking area.
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Decision

1. The appeal is dismissed.

Reasons

2. The appeal site is an unkempt grass and shrubbed sloping embankment with a frontage to Harrop Green Lane. It adjoins the rear gardens of dwellings on Clydesdale Rise and Fatherford Close. On 14 January 2022, an LDC was granted on appeal (ref: APP/W4223/X/21/3278310) certifying that, on 31 January 2021, the use of the appeal site as operational railway land was lawful within the meaning of section 191(2) of the Town and Country Planning Act, as amended. The reason was that the appellant had 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.
3. The appellant now seeks to establish whether the development of a 3 bedroomed stone build dwelling with a turning and parking area on this land would be lawful. He submits that such development would be permitted by virtue of Class A of Part 18 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015. He submits that such development is authorised by a local or private Act of Parliament.
4. However, permission is granted if the local or private Act of Parliament *"designates specifically the nature of the development authorised and the land on which it may be carried out."* I have not seen any indication that any Act which the appellant relies on designates specifically that a dwelling would be erected on this land. Furthermore, condition A.1. states that *"development is not permitted by Class A if it consists of or includes:- (a) the erection,*

construction, alteration or extension of any building, bridge, aqueduct, pier or dam; or (b) the formation, laying out or alteration of a means of access to any highway used by vehicular traffic, unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained." I have not been provided with any evidence that the relevant prior approval has either been sought or granted.

5. In an appeal relating to an LDC, the onus of proving the relevant facts rests with the appellant and the standard of evidence is the balance of probabilities. Based on the evidence put before me, the appellant has failed to substantiate his case.
6. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of a 3 bedroomed stone build dwelling with turning and parking area 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.

B S Rogers

INSPECTOR