



Appeal Decision

Site visit made on 11 March 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09th May 2024

Appeal Ref: APP/V2255/X/24/3336828

Land north of Grove Road, Selling, ME13 9RN

- 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 Brian Macey against Swale Borough Council.
 - The application ref 23/504318/LDCEX is dated 20 September 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is 'the commencement of development (to comply with Condition 1) or a material start of 19/500224'.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development confirming that works undertaken on the site have led to the implementation of planning permission Ref. 19/500224 prior to its expiry on 30 October 2019.

Preliminary Matters

2. Planning permission was granted for the 'Erection of a single storey storage building' (ref.19/500224/FULL) on 30 April 2019. The planning permission (PP) was subject to a number of conditions. This included a 6-month time limit for the commencement of the development (Condition 1) and specification of the relevant plans showing the extent of the approved works (Condition 2). Such conditions are standard and there is no dispute between the main parties that they meet the legal tests and the requirements set out in Paragraph 56 of the National Planning Policy Framework in relation to the use of planning conditions.
3. The appeal relates to an application for an LDC that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that whilst it acknowledges that, on the balance of probability, a hole was likely dug within the specified timescale, there is some doubt as to whether it is in a position consistent with the approved plans. I have had regard to this statement in coming to my Decision.

Main Issue

4. Pursuant to the provisions of s195(2) and (3) of the Act, the main issue is whether or not a refusal of the application by the Council would have been well founded.

Reasons

5. Section 56(2) of the Act 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'. Section 56(4) provides the meaning of 'material operations'; sub-paragraph (b) includes 'the digging of a trench which is to contain the foundations, or part of the foundations, of a building'.
6. The Planning Practice Guidance¹ and Procedural Guide² reflect prior Court judgments. They set out that an 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 the appellant's evidence alone is sufficiently precise and unambiguous.
7. One of a series of photographs of the excavation provided by the appellant is dated by reference to a post on a social media site. This shows the hole to have been dug on, or before, 11 October 2019. As a date prior to the expiry of the PP, I see no reason to dispute the claim of the timing of the works.
8. There is little by way of any detailed measurements to demonstrate the exact location of the hole in relation to any identifiable fixed point on the land. At the time of my site visit, although access to the location of the excavation had been provided, the area of the land about it, and between the hole and the containers to the east and the stable to the south, were covered with high brambles. This limited the ability to see directly from the position of the hole to those features.
9. However, when viewed from closer to the northern boundary of the site, the position of the hole appeared in general alignment with the front elevation of the stable. This is consistent with the position of the principal elevation of the storage building shown on the approved plans. When viewed from the nearest fence line to the west, the position appears short of the full length of the proposed building. However, it would nevertheless be within the linear extent of the approved development.
10. The Council's submitted aerial photograph from 2019 pre-dates the claimed date of excavation. However, in cross-referencing the appellant's photo 2, submitted with the LDC application, and the 2021 aerial photo provided by the Council, it seems to me that the hole is visible in the aerial photo north-east of and close to the 2 white bowsters, crates and matting (seen behind the hole in photo 2). It appears roughly in alignment with the front of the stable, and in alignment with the gap between the 2 northern-most containers.
11. It is unhelpful that the roof of the stable building does not appear square in the aerial photo. However, the hole appears roughly perpendicular to the stable's northern elevation at its north-western corner. Even if it were slightly offset, in the context of isolated development in a rural location, such a discrepancy would not be material if, in fact, it exists.

¹ Paragraph: 006 Reference ID: 17c-006-20140306

² Certificate of lawful use or development appeals: procedural guide 11 January 2024

Conclusion

12. For the reasons above, I conclude that a material operation comprised in the development has taken place. The evidence before me indicates that this was carried out prior to expiry of the 6-month period specified in the 2019 planning permission. It was also observed to be in a location where the approved development would be carried out. The development therefore shall be taken to have begun. Accordingly, I find that a refusal to grant a certificate of lawfulness in respect of 'commencement of development (to comply with Condition 1) or a material start of 19/500224' would not have been 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.

R Hitchcock

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 11 October 2023 the operation 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 excavation of a hole to provide a foundation or footing to the storage building approved under planning permission 19/500224/FULL was a material operation comprised in the development and took place prior to the expiry of the 6 month period for the implementation of planning permission ref. 19/500224/FULL.

Signed

R Hitchcock

Inspector

Date: 09th May 2024

Reference: APP/V2255/X/24/3336828

First Schedule

The excavation of a foundation hole as a commencement of development (to comply with Condition 1) or a material start of planning permission 19/500224/FULL.

Second Schedule

Land at: Land North of Grove Road, Perry Woods, ME13 9RN

IMPORTANT NOTES – SEE OVER

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 operations described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 09th May 2024

by R Hitchcock BSc DipCD MRTPI

Land at: north of Grove Road, Perry Woods, ME13 9RN

Reference: APP/V2255/X/24/3336828

Scale: Not to Scale

