



Appeal Decision

Site visit made on 5 March 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2024

Appeal Ref: APP/P2365/X/23/3331276

Hundred End Farm, Marsh Road, Banks, Lancashire PR9 8DZ

- 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 Paul Barton against the decision of West Lancashire Borough Council.
 - The application ref 2023/0772/LDC, dated 22 August 2023, was refused by notice dated 4 October 2023.
 - 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 described as 'the prior creation of access to Hundred End Farm, Marsh Road, Banks from Hundred End Lane. This involved the construction of two brick piers and a metal gate set back from Hundred End Lane...'
-

Decision

1. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the extent of the existing operation which is found to be lawful.

Application for costs

2. An application for costs was made by Mr Paul Barton against West Lancashire Borough Council. This application is the subject of a separate decision.

Main Issue

3. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

4. Section 191(1) of the Town and Country Planning Act 1990 (as amended)(the Act) provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful; or (c) any other matter constituting a failure to comply with any condition or limitation subject to which Planning Permission has been granted is lawful – they may make an application for the purpose to the local planning authority, specifying the land and describing the use, operations or other matter.
5. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) 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); and ii) They do not constitute a contravention of any enforcement notice then in force.

6. In their application, the appellant sets out they are applying for 'existing building works' and describes the building works as 'the prior creation of access to Hundred End Farm, Marsh Road, Banks, from Hundred End Lane. This involved the construction of two brick piers and a metal gate set back from Hundred End Lane as shown on the application drawing and referred to in the applicant's statutory declaration. This work was carried out prior to 2012.'
7. There are therefore two elements to this appeal: firstly, the construction of two brick piers and a metal gate; and secondly the creation of an access from Hundred End Farm to Hundred End Lane. The Council refers to Hundred End Lane as being a classified road and while I do not have any substantive details regarding Hundred End Lane, this is not disputed by the appellant.
8. Section 55 of the Act sets out that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The construction of the brick piers and a metal gate, in my view, comprised a building operation and would have been development for the purposes of the Act. There is no suggestion that the works would have been permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO).
9. Section 171B(1) of the Act states where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
10. The Council refused the application on the basis it was not satisfied that the opening onto Hundred End Lane has been continuously utilised for vehicular access for a period of 10 years or more prior to the date of submission of the application. However, the use of an access is not itself a material change of use. While an enforcement notice alleging a material change of use may attack ancillary or incidental works which have been carried out to facilitate that unauthorised material change of use, there is no suggestion that there has been a material change of use of the land in this case and so the 10 year immunity period is not relevant.
11. This appeal will turn on whether the piers and the gate were substantially completed on or before 22 August 2019¹, and, if so, whether they constitute an access from Hundred End Farm to Hundred End Lane. In an LDC application, the burden of proof² is firmly on the appellant. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
12. During my visit, I saw there are brick piers either side of a metal gate, with wooden cladding affixed to it. The land beneath the gate and leading up to it appeared to comprise grass and between the gate and the highway is a grass verge, with kerb stones. Vehicles leaving Hundred End Farm have to cross the grass verge to enter the highway. Mud tracks were evident on the grass verge,

¹ Namely 4 years prior to the date of the LDC application.

² On the balance of probabilities

suggesting that a vehicle has used it to access the highway, however, there is no dropped kerb and no hardstanding between the gate and the kerb stones.

13. In support of their case, the appellant has provided a statutory declaration which states that at the time they moved into Hundred End Farm, there was an existing 'access' to their property from Hundred End Lane, which consisted of two brick piers, and a metal gate set back from Hundred End Lane. The appellant states the only change they have made since 2012 is to timber clad the gate.
14. The Council advises it has found nothing to dispute the appellant's assertion that the gates were already installed in July 2012 and refers to a number of Google images which it says indicate the gates were installed at that time. In particular, the Council refers to images, which it says show the metal gate was *in situ* in March 2019 and July 2021. The Council advises, at the time of its visit on 8 September 2023, wooden cladding was on the gate.
15. Although the wooden cladding is attached to the metal gate, it seems likely that there has been more than one operation, i.e., the construction of the brick piers and metal gate and subsequently, the addition of wooden cladding. The appellant does not explain when the wooden cladding was added to the gate and from the Council's description of the above image dated July 2021, it seems unlikely the wooden cladding is lawful by virtue of the passage of time.
16. Nevertheless, given the above, it seems likely, on the balance of probabilities, that the brick piers and metal gate were substantially completed long before 22 August 2019 and would therefore have been lawful by virtue of the passage of time. I shall therefore go on to consider whether as a matter of fact and degree, the works which have been carried out comprised the creation of an access onto Hundred End Lane.
17. The correct approach is to look at the works as a whole and determine whether what took place would be properly characterised as the formation of a means of access to a highway. While the opening of the metal gate would physically allow a vehicle or foot passenger to pass from within the site to the land beyond, they must also pass over the adjacent verge before entering the highway.
18. I am mindful that grass verges can form part of a highway. However, the extent of the highway has not been demonstrated in this case. Furthermore, the Act states an engineering operation includes the formation and laying out of a means of access³ to highways. Even if the grass verge does form part of the highway, where there has been the creation of an access, I would also expect there to be some form of engineering operation.
19. Engineering operations involve works with some element of pre-planning, which would generally be supervised by a person with engineering knowledge, though it is not necessary for the operations to actually be so supervised. The formation and laying out of a means of access to a highway must involve some works amounting to, as a matter of fact and degree, 'formation' or 'laying out' of that means of access, such as the laying of hardstanding. The works do not need to be substantial, but should, in my view, be more than merely driving onto the land.

³ 'Means of access' includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street.

20. From my inspection of the site, although it appears the grass verge has been used to gain access to Hundred End Lane from Hundred End Farm, works have not been carried out for the formation or laying out of means of access to the highway and so an engineering operation has not been carried out.
21. Although the erection of a gate and brick piers comprise the carrying out of building operations and are development for the purposes of the Act, in my view they cannot be properly characterised as the formation of a means of access to a highway and so the appeal fails in respect of the creation of access to Hundred End Farm, Marsh Road, Banks from Hundred End Lane.
22. Thus, I consider the appeal should succeed in respect of the brick piers and metal gate only.

Conclusion

23. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the construction of two brick piers and a metal gate was not well-founded and that the appeal should succeed in this respect only. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

M Savage

INSPECTOR



The Planning Inspectorate

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 22 August 2023 the operations 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:

It has been demonstrated, on the balance of probabilities, that the construction of the brick piers and metal gate was substantially completed by 22 August 2019 and so the time for enforcement action had expired and they do not contravene the requirements of any enforcement notice then in force.

Signed

M Savage

Inspector

Date: 15 May 2024

Reference: APP/P2365/X/23/3331276

First Schedule

The construction of two brick piers and a metal gate

Second Schedule

Land at Hundred End Farm, Marsh Road, Banks, Lancashire PR9 8DZ

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.



Plan

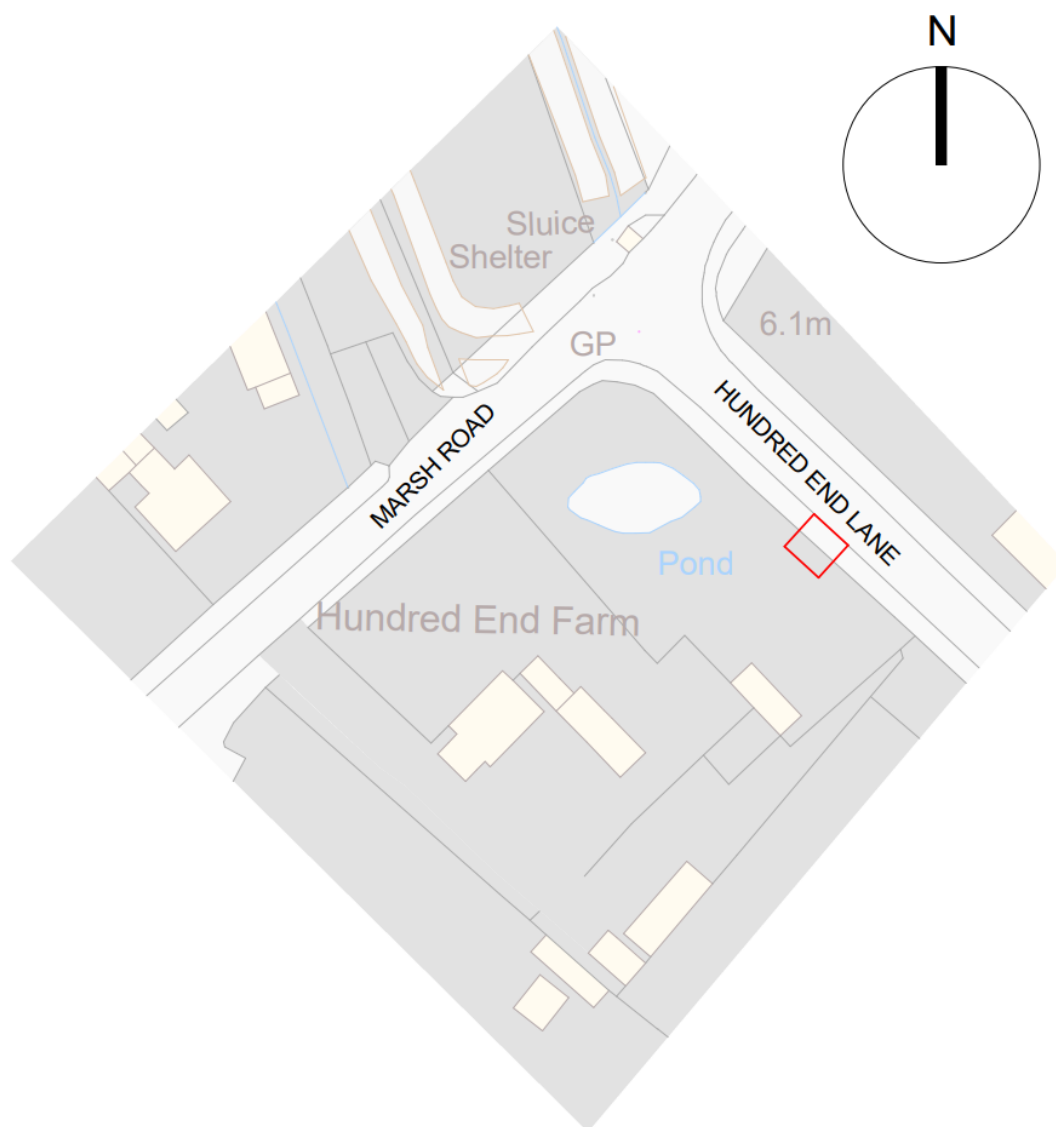
This is the plan referred to in the Lawful Development Certificate dated: 15 May 2024

by M Savage BSc (Hons) MCD MRTPI

Land at: Hundred End Farm, Marsh Road, Banks, Lancashire PR9 8DZ

Reference: APP/P2365/X/23/3331276

Scale: Not to Scale



Ordnance Survey, (c) Crown Copyright 2023. All rights reserved. Licence number 100022432