



Appeal Decision

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

Appeal Ref: APP/P2935/X/23/3332406

23-25 Western Way, Darras Hall, Ponteland, Northumberland NE20 9AS

- 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.
 - The appeal is made by Mr N Jordan against the decision of Northumberland County Council.
 - The application ref 23/02898/CLEXIS, dated 1 August 2023, was refused by notice dated 16 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 the digging of foundations.
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Decision

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

Preliminary Matters and description of development

2. The application form does not make clear what development the confirmation of lawfulness is being sought for. It refers to a covering letter titled 'Certificate of lawful development for commencement of planning permission 14/03746/FUL at 23 and 25 Western Way'. The letter describes that foundations have been dug pursuant to planning permission ref. 14/03746/FUL (the Planning Permission).
3. It is clear from the submissions as a whole that the appellant is trying to establish that a lawful commencement was made within the time limit. The Council has also understood this to be the case, having used a similar description on the notice of refusal. The analysis within the officer's report further confirms this.
4. However, 'commencement of development' is not an act of development, nor a use. An LDC can only be granted under S191 of the Town and Country Planning Act 1990 as amended (the 1990 Act) in respect of existing uses, operations or a breach of condition. I have, therefore, described the development as 'the digging of foundations', being the operations that appear to have been carried out at the site. Both parties have confirmed that the appeal can proceed on this basis and that a site visit is not necessary.

Reasons

5. Section 191(2)(a) of the 1990 Act sets out that operations are lawful at any time if no enforcement action may then 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). In this case, the appellant claims that the works carried out benefit from the Planning Permission. There is no suggestion that the trenches might be on the site other than in connection with the carrying out of the development described in the Planning Permission or that they are not in a location that accords with the approved layout plan. The only relevant disputed matter, is whether they were carried out before the Planning Permission expired.

6. The burden of proof is on the appellant and the standard of proof required is the balance of probabilities. If the evidence is sufficiently precise and unambiguous and there is no evidence to contradict the appellant's version of events or make it less than probable, then their evidence should be accepted and an LDC should be issued. Additional evidence has been provided at appeal stage to supplement the appellant's case, which the Council has had opportunity to comment on. There is, therefore, no reason that I should not take account of that in deciding the appeal.
7. The appellant has provided a detailed account of events in the period of time shortly before the Planning Permission was due to expire. From this, it is evident that he was fully aware of the need to start before the Planning Permission expired, took steps to ensure that all necessary planning conditions were complied with and made a Building Regulations application. Around that time, trenches were dug for some foundations. They are still visible.
8. There is no photographic record of the work being done at the time. There are records of emails sent to update various people as to the progress being made on the site, but they do not always confirm which site is being spoken about. There are also emails from the appellant to the Council's Building Control officers advising them what had been done and inviting them to inspect.
9. There are then emails informing others that the Building Control officers have been to site to inspect the trenches, however, there is no formal confirmation from those officers that they had been, or as to what they saw. Additional emails provided with the appeal suggest that those officers will testify as to what they saw and when, but there is no testimony.
10. The Council has suggested that the absence of any record on the Building Control files is evidence that a commencement did not occur within the appropriate time. However, even if the Council might expect a record to exist, an absence of evidence is not contrary evidence and Building Control officers have subsequently confirmed that there being no formal record of a commencement is not evidence that one did not occur. Moreover, the trenches clearly exist now, so the absence of confirmation in the Building Control records cannot indicate that they were not dug.
11. Given the lack of formal documentation, it is, perhaps, unfortunate that the appellant's statement is not in the form of a statutory declaration. Such would give greater certainty. Nevertheless, the appellant's submissions are a clear explanation as to what was being done at the site at the relevant time. Importantly they are further supported by email correspondence – especially that which invites the Council's officers to inspect the trenches that had been dug – that very strongly suggests that the work was done before the Planning Permission expired.

12. In the absence of any contrary evidence, the statements made by the appellant, supported by correspondence that corroborates their version of events, are sufficiently precise and unambiguous for me to find that, on the balance of probabilities, the trenches at the appeal site were carried out pursuant to the Planning Permission, before that permission expired.
13. Therefore, the matters described above benefit from the Planning Permission and are lawful.

Conclusion

14. 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 digging of foundations was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

M Bale

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 1 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probabilities, the foundation trenches have been dug pursuant to and in accordance with Planning Permission ref. 14/03746/FUL, before that Planning Permission expired.

Signed

M Bale

INSPECTOR

Date: 10 June 2024

Reference: APP/P2935/X/23/3332406

First Schedule

The digging of foundations.

Second Schedule

Land at 23-25 Western Way, Darras Hall, Ponteland, Northumberland NE20 9AS

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: 10 June 2024

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Land at: 23-25 Western Way, Darras Hall, Ponteland, Northumberland NE20 9AS

Reference: APP/P2935/X/23/3332406

Scale: Not to Scale

