

Appeal Decision

Site visit made on 8 August 2024

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 4th September 2024

Appeal Ref: APP/X4725/X/24/3343096

Land adjoining 82 Womersley Road, Knottingley WF11 0DL, West Yorkshire

- The appeal is made by Lee Machell of D Noble Ltd under section 195 of the Town and Country Planning Act 1990 against a refusal by Wakefield Metropolitan District Council to grant a lawful development certificate.
 - The application Ref. 24/00350/CPE, dated 26 February 2024, was refused by notice dated 3 April 2024.
 - The application was made under section 191(1)(b).
 - The development for which the certificate is sought was described on the application form as "The construction of a single detached 2-storey dwelling on the open parcel of land located between nos. 82 and 88 Womersley Road" and is described on the Council's decision notice as "the commencement of building works to construct 1No. dwelling on residential land at land south of 82 Womersley Road, Knottingley WF11 0DL in accordance with the terms of the application Ref 20/01840/FUL, dated 31 August 2020".
 - The application Ref. 20/01840/FUL was approved on appeal on 26 March 2021 (appeal reference APP/X4725/W/20/3263722). Planning permission was granted for one dwelling on the land, subject to ten conditions. Condition 1 is a standard condition requiring the development to be begun within three years. Condition 2 requires the development to be carried out in accordance with the approved plans 678/P/176/01 (Location Plan), 678/P/02R (Proposed Site Layout (Sh 1)) and 678/P/39B (Dwellings- Type KZ3).
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Decision

1. The appeal is dismissed.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the proposed development at the time of the application. The planning merits of the development are not relevant to the appeal and there is no planning application before me.
 3. The appellant has submitted photographs taken on 26 Jan 2024 that show the existence of an L-shaped trench on the site, which has since been back-filled. He indicates that this is a foundation trench and maintains that it is clear evidence that operational development relating to the planning permission has begun within the time limit.
 4. The Council refused the application for the following reason:
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“1. The evidence and facts before the Council are not sufficient to demonstrate that, on the balance of probability, the works which have been undertaken comprising the excavation of foundation trenches constitute operational development having regard to Sections 55 and 56 of the Town & Country Planning Act 1990 (as amended).

Therefore, compliance with condition 1 of application 20/01840/FUL cannot be confirmed.”

5. Section 56(2) of the 1990 Act states 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”. The definition of “material operation” in section 56(4) includes “the digging of a trench which is to contain the foundations, or part of the foundations, of a building”.
6. It is necessary that the operation which has been carried out is comprised in the planning permission and that it has been done in accordance with the permission. In this instance, the line of the back-filled trench that is still visible on the site does not match the line of any foundation work that would be required to construct the building shown on the approved plan 678/P/02R, since the line of the trench is entirely at odds with the outline of the building shown on that plan.
7. The onus is on the appellant to make out the case for the certificate to a standard based on the balance of probabilities. The evidence submitted does not achieve that standard and I am therefore satisfied that the Council's refusal of the application is well-founded. The appeal has therefore been dismissed.

D.A.Hainsworth

INSPECTOR