



Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th November 2024

Appeal Ref: APP/B5480/X/23/3336178

36-38 Victoria Road, ROMFORD RM1 2JH

- 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 M. Vankad against the decision of the Council of the London Borough of Havering.
 - The application ref E0020.23, dated 16 May 2023, was refused by notice dated 13 July 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 "Implementation of approved planning permission ref:P1928.17 before the expiry of 3 years, hence the planning permission is now alive/extant by doing piled foundation works, as per e-mail evidence from piling contractor, pile logs and piled foundation invoices attached, showing works were completed on or before 1 December 2020."
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operational development, which is considered to be lawful.

Applications for costs

2. An application for costs was made by the appellant. This application is the subject of a separate decision.

Preliminary Matters

3. No site visit has been carried out as the appeal can be decided purely on the basis of the technical and/or legal interpretation of the facts. All the information needed is included with the application and appeal documents and so a decision can be reached on the papers¹. There are no objections from the parties to proceeding in this way.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded. That turns on whether the appellant can show, on the balance of probabilities, that there was a material operation sufficient to implement a grant of planning permission before it expired.

¹ Certificate of lawful use or development appeals: procedural guide, updated 12 September 2024, paragraph 8.2.10.5 "A site visit won't be needed for every appeal. It is for the Inspector, or their representative, to decide whether to conduct one."

Reasons

5. The appeal concerns a parcel of land to the rear of commercial premises on Victoria Road. Planning permission (Ref: P1928.17) was granted on 18 January 2018 for the construction of two commercial units on this land subject to various conditions. The Council advise that all pre-commencement conditions were discharged on 31 March 2020.
6. At the time when the application was determined no site visit was undertaken due to the restrictions in place during the Covid-19 pandemic. The Council relied on photographs from the appellant, Google Street View, aerial view images and submitted drawings to assess the site constraints. The photographs were not dated and the pile log completion date submitted as evidence was not within the time limit of the approved decision. The Council were therefore not satisfied on the matter of lawfulness.
7. Following the submission of the appeal and the additional information, such as dated photographs and confirmation that the piling took place before the expiry of the planning permission, the Council are now satisfied and consider a certificate should be issued.
8. The appellant states he carried out the foundation works at the appeal site between 16 November 2020 and 1 December 2020. 27 piles for the foundations were completed in this time. These works were carried out by a piling contractor, Capital Piling Ltd. The evidence to support his submission includes the following:
 - an invoice from Capital Piling Ltd dated 30 November 2020 confirming the completion of the piling works,
 - 3 emails from Capital Piling Ltd confirming piled foundation works began on 16 November 2020 and were completed on 1 December 2020,
 - an email from Capital Piling Ltd explaining the 1 December 2021 completion date was incorrectly shown on the initial Pile Log and that it should have been typed as 1 December 2020, and
 - dated photographs (19 and 25 November 2020) taken during piling works and showing piles in place.
9. Very little is needed to commence a development for the purposes of section 56 of the Town and Country Planning Act 1990. The key point is that the work carried out has to be material and not de minimis. Condition 1 attached to the grant of planning permission stated that the development should be begun before the expiration of three years from the date of the permission. The relevant date is therefore 17 January 2021 by which a material start needed to have taken place.
10. In an appeal relating to a LDC the burden of proving relevant facts rests with the appellant. The appellant's own evidence does not have to be corroborated by "independent" evidence. In this case the Council state there are no relevant Building Control records. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.

11. I have had regard to all of the appellant's submissions. The dated photographs clearly show multiple piles on site and in the ground. The dated Pile Log shows that piles were placed in the ground during November 2020 at the appeal site and the promptly issued invoice dated 1 December 2020 confirms that the work took place. In addition, another email from the piling company dated 30 November 2020 sent at 11.34am states there are 4 piles left to do and that they will be returning on 1 December 2020 to carry out that work.
12. My conclusion is that the appellant's evidence is precise and unambiguous. He has shown a material start took place before the expiration of condition 1 and the planning permission was therefore lawfully commenced. As such I find the planning permission reference P1928.17 remains extant.

Conclusion

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the implementation of approved planning permission reference P1928.17 before the expiry of 3 years, by doing piled foundation works, was completed on or before 1 December 2020 was not well founded. Therefore, the appeal should succeed and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended

D Fleming

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 16 May 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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:

The operational development carried out between 16 November 2020 and 1 December 2020 is sufficient to constitute a material start of planning permission ref P1928.17 as it took place prior to the expiry date of 18 January 2021. Consequently, the planning permission remains extant.

Signed

D Fleming

Inspector

Date: **4th November 2024**

Reference: APP/B5480/X/23/3336178

First Schedule

Implementation of approved planning permission reference P1928.17 before the expiry of 3 years, hence the planning permission is now alive/extant, by doing piled foundation works, as per e-mail evidence from piling contractor, pile logs and piled foundation invoices attached, showing works were completed on or before 1 December 2020.

Second Schedule

Land at 36-38 Victoria Road, ROMFORD RM1 2JH

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: **4th November 2024**

by D Fleming

Land at: 36-38 Victoria Road, ROMFORD, RM1 2JH

Reference: APP/B5480/X/23/3336178

Scale: Not to Scale

