



Appeal Decision

Site visit made on 18 March 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2025

Appeal Ref: APP/G5180/X/23/3327736

Park Langley Tennis Club, 44A Wickham Way, Beckenham BR3 3AF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development ('LDC').
 - The appeal is made by The Park Langley Tennis Club against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/05745/ELUD, dated 2 December 2021, was refused by notice dated 29 June 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 commencement of operations to construct an extension to the existing club to provide an additional squash court with access and viewing areas*'.
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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 development which is considered to be lawful.

Background

2. In an appeal under s195 of the 1990 Act, as amended, against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence would need to show that those works carried out constituted operations necessary to amount to the commencement of the approved extension to the clubhouse, and that these commenced within the time limitation period.
3. The onus of proof is on the appellant to demonstrate, on the balance of probability, that commencement occurred, as required, thereby confirming that the planning position is as claimed. Accordingly, the key is that the evidence should be precise and unambiguous to this end.
4. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on the evidential facts, planning legislation and relevant case law.
5. In February 2018 planning permission (ref DC/17/05298/FULL1) was granted for an extension comprising a new squash court with access and viewing areas. In accordance with the relevant statutory time limitations the permission required that the necessary associated works be commenced before 8 February 2021; not more than three years after the date planning permission was granted.

6. Subsequently, in October 2018 planning permission (ref DC/18/02246/FULL1) was granted for an extension to the clubhouse building, comprising a new gallery bar, terraces and staircase.
7. The preparatory works carried out in this particular instance comprised the formation of the fire compartment wall, complete with fire door, that would be between the existing bar and the new staircase to the proposed upper floor bar. The Council commented, in its case report that, the works carried out were entirely to the existing building's interior and, as these did not materially affect the external appearance of the building the works undertaken cannot be considered as amounting to development as defined in s55(2) of the Act.
8. In view of this the Council refused to issue the LDC applied for.

Main Issue

9. The main issue in this appeal is whether, on the balance of probability, the development had been implemented and lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

10. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
11. Section 56(1) says that , for the purposes of the Act development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations are begun. S56(2) goes on to say 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.
12. Very little is needed to 'initiate development' under s56(1). In the case of *Spackman v Secretary of State and Thamesdown Borough Council* [1977] the laying of drainage pipes was held to be a 'specified operation' even though the foundations' trenches did not exist.
13. Section 56(4) expounds on the earlier provision and defines 'material operation' as encompassing a number of different acts, ranging from any work of construction in the course of erecting a building to digging a trench. The courts have shown themselves to be relatively liberal in the interpretation of this provision and, to this end, in the judgement of *Thayer v Secretary of State* [1992] JPL 264 it was held that the opening of a 12 foot gap in a hedge and limited ground preparation was sufficient to implement a planning permission.
14. Whilst I acknowledge that s55(2)(a) does say that the carrying out of works which affect only the interior of a building or do not materially affect its external appearance do not involve development of land. However, that is not the issue here. Instead, contrary to the Council's approach, the crux of the matter is whether the works carried out constitute a material operation relating to the planning permission.
15. By the judgement in *Malvern Hills DC v SSE* [1982] the Court of Appeal held that the test for commencement is not the quantum' of work undertaken, but whether the work was related to the planning permission involved. However, by way of *Connaught Quarries Ltd v SSETR & East Hants DC* [2001] the beginning of a

material operation under s56(2) and (4), for the purposes of keeping a permission alive, has also to be more than de minimis.

16. The question, therefore, is whether what was undertaken had been done in accordance with the relevant planning permission and was material in the sense of not being de minimis. The appropriate test under s56 is objective and the assessment therefore requires a fact and degree approach.
17. The Council indicates that the works carried out were a temporary operation towards completing the eventual opening required. The appellant counters this by saying that the opening created is permanent, allowing for the only point of internal access between the existing squash courts and the proposed new court within the approved adjoining extension that would encroach slightly into the existing car park area. The appellant says that the only temporary element is the its weathering enclosure. Further, the works were interrupted due to Covid.
18. An e-mail, dated 28 January 2001, from Arnage Builders Ltd to the Park Langley club refers to steels, a lintel, padstone insulation and wall/ceiling colours and indicates that works will commence in a matter of days. This was subsequently followed up by a site visit report, dated 25 February 2021, by an approved Building Inspector who refers to the same, and the related works having been undertaken.
19. In the current case I consider that the operational works carried out were material to the planning permission involved – there is nothing to suggest that they related to anything otherwise - and were not de minimis. Accordingly, I am satisfied that they constituted implementation.

Conclusion

20. For the reasons given above, and as a matter of fact and degree, I find that the operational works undertaken were related to the approved development and were of sufficient materiality to this end. The works were also carried out within the required time limit.
21. I therefore conclude, on the evidence now available, that the Council's refusal to grant the requested LDC was not well founded as, on the balance of probability, the development had been implemented and was lawful within the meaning of s 191(2) of the 1990 Act, as amended.
22. Accordingly, the appeal succeeds and I will exercise my powers under section 195(2) of the 1990 Act as amended.

Timothy C King

INSPECTOR

Lawful Development Certificate

APPEAL REF. APP/G5180/X/23/3327736

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 9 December 2021 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown 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:

No enforcement action could have been taken in respect of the operational works carried out as they were material to, and consistent with, the approved development involved, and had been undertaken within the appropriate time limitation period, allowing for the approved development to lawfully proceed.

Timothy C King

INSPECTOR

Date: **17 April 2025**

First Schedule

The commencement of operations to construct an extension to the existing club to provide an additional squash court with access and viewing areas.

Second Schedule

Park Langley Tennis Club, 44A Wickham Way, Beckenham BR3 3AF

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the development described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the certified date and, thus, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. This certificate applies only to the extent of the development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any development 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 attached to the Lawful Development Certificate dated: **17 April 2025**

by Timothy C King BA (Hons) MRTPI

**Park Langley Tennis Club, 44A Wickham Way,
Beckenham BR3 3AF**

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