



Appeal Decision

Site visit made on 19 September 2025

by Grahame J Kean BA (Hons), Solicitor (HRA), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2025

Appeal Ref: APP/V3120/X/24/3346774

Land at Lincombe Lane Boars Hill Oxfordshire

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Stephen Neate against Vale of White Horse District Council.
 - The application ref P24/V0810/LDE is dated 9 April 2024.
 - 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: lawful implementation of planning permission P73/V0396 which granted consent for a dwelling and garage.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. I have amended slightly the description of the development for which the certificate is sought, better to express the appellant's desire to certify a lawful implementation of the planning permission concerned.

Reasons

3. The application was made under s192(1)(b) of the 1990 Act to establish the lawfulness of operations said to have been carried out to implement planning permission Ref P73/V0396. So far as is relevant s191(2) states 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).
4. The relevant date for ascertaining whether an existing development is lawful is the date of the LDC application. In an LDC appeal, the onus is on the appellant to provide precise and unambiguous information sufficient to demonstrate its case to the standard of the balance of probability. Issues of planning merit are irrelevant.

The planning permission Ref P73/V0396

5. Abingdon Rural District Council granted outline planning permission on 30 May 1949 for residential development on land at Lincombe Lane. The notice of consent reserved approval for certain detailed matters. The application form for a dwelling on Plot 4 was dated 28 March 1972 and permission was granted on 16 October 1973, Ref P73/V0396 in respect of those reserved matters, for "*Dwelling & Gara[g]e, Plot 4 Broomhill Lincombe Lane, Boars Hill*".

6. Condition (1) required the development to be “commenced” within two years of the consent. Condition (2) stated:

Detailed particulars/samples of all materials to be used externally in the construction of the development hereby permitted shall be submitted to and approved by the Local Planning Authority before construction is commenced. This condition shall apply notwithstanding any indications as to these matters which have been given in the current application.

The reason for condition (2) was “in the interests of amenity”, as it was for Condition (3) which stated that no tree on the site should be topped, lopped or felled without the prior permission in writing of the local planning authority.

Analysis of statutory timeline for permission Ref P73/V0396

7. By s56(1) of the 1990 Act development of land shall be taken to be initiated, if it consists of the carrying out of operations, at the time when those operations are begun. By s56(2) 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 deemed condition relating to the duration of the permission refers not to “commencement” but to when the development must be “begun” but the use of “commencement” in conjunction with “development” is commonly understood to refer to the time when the development is begun for the purposes of the 1990 Act..
8. However, neither party considered in detail the time limits relevant to permission Ref P73/V0396. These time limits should clearly be considered, including by anyone who is in the least bit curious as to why a reserved matters approval could be obtained well over twenty years after the enabling outline consent.
9. Time limits on commencement of planning permissions were introduced for the first time by s65(1) Town and Country Planning Act 1968 (TCPA68) which stipulated a five-year period for commencement for all planning permissions granted or deemed granted before commencement of TCPA68 and all permissions granted after commencement. Section 65 came into effect on 1 April 1969, however, s65(1) did not apply to outline permissions. Section 66 TCPA68 dealt with outline permissions and would therefore have applied to the outline permission granted by Abingdon RDC. However, it appears that s66 never came into force until it was incorporated into the Town and Country Planning Act 1971 (TCPA71) through consolidation rather than direct amendment.
10. Thus, the substance of s66 was included in TCPA71. Schedule 24 dealt with the duration of planning permission. Paragraph 19(1) of Schedule 24 stated:
- “Subject to sub-paragraph (2) of this paragraph, every planning permission granted or deemed to have been granted before 1st April 1969 shall, if the development to which it relates had not been begun before the beginning of 1968, be deemed to have been granted subject to a condition that the development must be begun not later than the expiration of five -years beginning with 1st April 1969.”*
11. This would have made the outline permission granted in 1949 subject to a condition that development had to be started within five years beginning with 1 April 1969, ie by 1 April 1974, however paragraph 19(2) of Schedule 24 made it clear that this five-year statutorily deemed condition did not apply to any such

planning permission as is mentioned in section 41(3) TCPA71, ie any outline permission as defined by s42 TCPA71.

12. Further, paragraph 20(1) of Schedule 24 stated that where before 1 April 1969 outline permission (as defined by s42 TCPA71) was granted for development consisting in or including the carrying out of building or other operations, and the development had not been begun before the beginning of 1968, planning permission shall be deemed to have been granted subject to certain conditions.
13. Importantly, those conditions were that in the case of reserved matters, application for approval must be made not later than the expiration of three years beginning with 1 April 1969; and that the development must be begun within five years from 1 April 1969, or within two years from the final approval of the reserved matters or, in the case of approval on different dates, when the last matter was approved.
14. Paragraph 19(2) of Schedule 24 also disapplied the five-year condition to permissions granted before 1 April 1969 subject to an express condition that the development should be begun or be completed not later than within a specified period. Paragraph 20(2) in turn, disapplied the three-year and two-year restrictions where a pre-1969 permission was conditioned to require development to be begun or completed, or reserved matters to be applied for within a specified period. We do not know the terms and conditions of the 1949 outline permission. However, it is unlikely that a consent of that age would have attached such conditions.
15. The upshot is that, as of 1 April 1972, when Schedule 24 came into operation, a reserved matters application must have been made in respect of the outline permission, within three years of 1 April 1969, ie by 1 April 1972. The application form as noted above, was dated 28 March 1972. Therefore, it was validly made within a matter of days from the deadline for submission. This statutory timeline explains why, in the absence of any completion notice or other intervention, an outline permission might not have been acted upon for so long in the past.

Construction of Permission P73/V0396

16. Permission P73/V0396 referenced the “detailed application and accompanying plans”. Mere reference to a plan or other document is not enough to incorporate it into the permission without further clear words to that effect. Nevertheless, I have been provided with the plans submitted with the application including a layout that shows Plot 4, a rectangular site within a row of similarly sized plots. Some but not all the plots have been built out. However, as I saw, Plot 4 remains unbuilt on.
17. The application drawings show the location within the plot of a detached house with integral garage and details of external materials, including a tiled roof and a combination of brickwork and white timber boarding. They also showed provision for a septic tank foul drainage system. The existing use of the land is woodland. As to whether there would be felling of trees the application stated “*minimum for building operation*”. As I saw on site, the general area to the front of the plot is clear, although not completely of trees. There was no evidence of drainage having been laid within or upon the land.
18. The Council accepts that the laying out of the drainage works, ie digging trenches to accommodate the works, would be an act of development which if it occurred, would constitute the development as having “begun” for the purposes of the 1990 Act. Its focus on the 1990 Act (in common with the appellant) is wrong. At the time

it is alleged commencement occurred, the TCPA71 would have been the controlling legislation. However (s43 TCPA71) the legislation is broadly similar in that development is taken to be begun on the earliest date when any “specified operation” (“material operation” in the 1990 Act) begins to be carried out.

19. Further, the Council finds no evidence that condition (2) was discharged and considers this condition to be a “pre-commencement” condition, as indeed does the appellant. I disagree that it is a “pre-commencement” condition. Neither party appears to have considered the precise wording of condition (2). It does not refer to commencement of the development but commencement of “construction”.
20. Specified operations are listed in s43 and notably, “*any work of construction in the course of the erection of a building*” is a separate entry in the list from the digging of a trench, laying pipes and so forth. The position is the same in s55 of the 1990 Act. This is a relevant example of how “construction” in a planning context could at times be associated with actual building work, as opposed to digging trenches, laying out the ground and so forth.
21. Approaching the matter by considering what the reasonable reader would understand condition (2) to mean in the context of the overall purpose of the permission, and with common sense, I find that it was concerned to prevent actual construction works, as opposed to other preliminary works that might constitute development such as digging a trench for drainage, until the materials to be used were approved and samples provided. The condition was imposed for reasons of amenity, and it would not have been necessary to secure approval of the external materials to be used before the actual building, ie construction work commenced.
22. Therefore, it would still be possible to submit such details for approval if, but only if, on the balance of probability, commencement of development occurred as claimed within two years of the date of the permission, ie by 16 October 1975.

Evidence as to commencement of development

23. Two statutory declarations are submitted, dated 19 February 2024. In the first, S, who with her son the appellant, is joint owner of the site, recalls a site meeting following the grant of permission in 1973 but is uncertain as to the date. The wider land of which plot 4 is a part, is owned and run by a family trust. The family was responsible for putting in road and service connections and the road is still owned by the family. S recalled that the meeting was to look at the family land and her mothers’ site (plot 4) where “*digging work had begun, the pegging out of the house and trenches dug from the road Service connection point*”. A plan showing the outline only of plot 4 is exhibited but there is no detail of where works were said to have taken place either within the plot or in the road adjacent thereto. Due to its lack of detail it carries limited weight.
24. The second declaration is from E, S’s “lifelong friend” as he puts it. He recalls an outing to a public house, possibly in 1974. After the visit to the public house, E states:

“we all went up the road to look at land of which one part was owned by Mary and had planning to build a house. I remember seeing some lines marked out for the house and I remember some digging work had been started, for the connection of services to the plot. I can also remember there being some fir trees at one end of the plot.”

25. Again, there is a plan exhibited with nothing on it except the outline of Plot 4. The declarations are ambivalent as to whether work may have been carried out in or under the road adjacent to the plot as opposed to within it. In any case, the lack of detail and certainty in the declarations, coupled with the fact that they refer to events some fifty years ago, renders them of limited value in my opinion.
26. The only other evidence provided is a very brief handwritten letter, dated 6 June 1974, which mentions the “*digging of trenches for Plot 4 Lichcombe Lane.*” I note that the appellant does not explain its provenance, in whose custody it has been, how it was produced to him and so forth. Nor does he explain who is the author or what attempts were made to corroborate what it seeks to prove, ie implementation of the permission, given its ambiguous nature. As the Council points out, it bears no company details, and it is unlikely that it was written by a building company.
27. It is indeed remarkable that no other contemporaneous record or evidence has been submitted other than this letter, penned by someone using a sheet from a lined writing pad. The letter is not a formal invoice and does not actually express a demand for money. The sum of “£190” written below the reference to the digging of trenches, at best implies but does not expressly state that this is the cost of the work. There is no information as to whether or when the work has been done or is yet to be done. It could be an estimate only. I accord very little weight to this letter as tending to show that any laying out of drainage on Plot 4 actually took place.
28. Taking all the information into account, I am unpersuaded that it is likely that Permission P73/V0396 was implemented within the two-year limit set by condition (1) and therefore I find that the permission lapsed after 16 October 1975.

Other matters

29. The appellant appears to invite me to infer from the absence of any evidence as to discharge of condition (2), that compliance could be assumed or the condition was somehow waived. Although not critical to the decision, I should note that it is well established that there is no general power to waive breaches of conditions. Legitimate expectation rarely operates here, given the public interest in seeing compliance with conditions being dealt with through formal statutory processes.

Conclusion

30. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of a lawful implementation of planning permission P73/V0396 was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Grahame J Kean

INSPECTOR