



Appeal Decision

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State of Communities, Housing and Local Government

Decision date: 7 November 2025

Appeal Ref: APP/W4223/X/24/3338071

Land at Station Road/Harrop Green Lane, Diggle, Saddleworth, Oldham

- The appeal is made by Mr Alan Broadbent under section 195 of the Town and Country Planning Act 1990 (as amended) against the failure of Oldham Metropolitan Borough Council to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The application (ref: CEA/351888/23) was dated 1 November 2023 and made under sections 192(1)(a) and (b) of the Town and Country Planning Act 1990 to ascertain that a proposed use of land and proposed building operations would be lawful.
- The development for which an LDC is sought is described as: "Operations to include a proposed new access from Harrop Green Lane including hard standing for two vehicles and turning area, gabion stone wall for a retention on the rear wall, services connected at the junction of Sam Road and Station Road, building construction 10 metres from Sam Road boundary building length 19 metres, 2 bedroom stone bungalow to a depth of build of 6 metres, stepped internal from Station Road/Harrop Green Lane boundary a 1 metre high wire fence situated to the rear of Fatherford Close and Clydesdale Rise properties where required".
- The use for which an LDC is sought is described as: "A change of use to C3 is required for a 2 bedroomed detached stone bungalow measuring 10 metres x 6.0 metres, the build shall accommodate grey slate roof with 1 front and 1 rear door, 1 patio door, double glassed windows 1 per bedroom (2 off), 1 kitchen/dining/lounge entrance hall, 2 toilet/shower, 1 ground source heat pump, hours of build 8.00-17.50 Monday to Friday, Saturday 8.00-15.00".

Formal Decision

1. The appeal is dismissed.

The Site and Planning History

2. The appeal site, edged in red on the submitted location plan, is a slim parcel of land bound by Harrop Green Lane to the southeast and the backs of 2-4a Clydesdale Rise and 10-12 Fatherford Close to the west and northwest. Harrop Green Lane runs parallel to Station Road, and in turn to the Trans-Pennine railway line.
3. As discussed below, the use of the site as existing on 31 January 2021 is subject to a lawful development certificate (LDC) granted via a previous appeal¹. The "2021 LDC" relates specifically to land with the postcode OL3 5LJ, but it seems that the site is now covered by two different postcodes, namely OL3 5PX and OL3 5PY. Nonetheless, the site before me is clearly identical to that subject to the 2021 LDC.
4. I have decided this appeal on the papers because it was unnecessary to visit the site. There is no evidence of any development taking place on the land since the previous Inspector described it as a "grassed and shrubbed sloping embankment".



¹ Appeal ref: APP/W4223/X/21/3278310 determined on 14 January 2022

The Proposed Development

5. An Inspector deciding an appeal made under section 192 (s192) of the Town and Country Planning Act 1990 (TCPA90) may not change a description of proposed development given on the application form without first obtaining the appellant's agreement. I have not sought such agreement because I have decided not to issue an LDC. However, for ease of reading this decision letter, I refer to the proposed development in short as "the construction of a bungalow and associated works".
6. As the application form makes clear and the word implies, the proposed bungalow would be used for residential or C3 purposes². The appellant did not submit plans of the development but that makes no difference to the outcome of this appeal.

Background and the Appellant's Case for Lawfulness

7. Under s263(1) and s264(1) of the TCPA90, the term "operational land" means, "in relation to statutory undertakers, land which is used for the purpose of carrying on their undertaking; and land in which an interest is held for that purpose" where the interest was acquired by them before 6 December 1968. The term "statutory undertaker" is defined under s262 as including "persons authorised by an enactment to carry on any railway...undertaking".
8. The Railway Clauses Consolidation Act 1845 (RCCA) made general provisions to apply to any undertaking to construct a railway authorised by any "Special Act" such as the Huddersfield and Manchester Railway and Canal Act 1845. The previous Inspector found that the Huddersfield and Manchester Railway and Canal Company (HMRCC) probably acquired the site in 1847 "for uses associated with the development of the railway". Within the RCCA, the term "Company" means a company authorised by any Special Act to construct a railway, meaning that HMRCC amounted to a statutory undertaker in today's money.
9. The 2021 LDC certifies that the existing use of the site as "operational railway land" was lawful on 31 January 2021 because "...the Land was purchased by the [HMRCC] before 1968 and, according to Section 263 of the [TCPA90] became operational land by virtue of its acquisition."
10. Section 16 of the RCCA states that "Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, it shall be lawful for the Company, for the purpose of constructing the Railway or the Accommodation Works connected therewith...to erect and construct such Houses...and other Works and Conveniences as they think proper." The appellant suggests, and there is no evidence otherwise, that four stone houses still standing on the opposite side of the nearby railway line were probably erected under the s16 provisions.
11. The appellant claims that, when he bought the site in November 1997, the "property, rights and liabilities" were transferred to him from HMRRC or their successor in title under Schedule 8 of the Railway Act 1993, and he thus acquired the s16 right "to construct such houses" on the site as operational railway land.

Main Issue

12. Under s191(2) of the TCPA90, uses and operations are lawful at any time if no enforcement action may be taken in respect of them, perhaps because they did not

² Use class C3 set out in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 encompasses "use as a dwellinghouse..."

involve development or require planning permission³. The onus is on the appellant to make that case on the balance of probabilities.

13. The main issue is whether the proposed construction of a bungalow and associated works would have been lawful for the purposes of s191(2) if they had been begun on the date of the application, namely 1 November 2023. The merits of the development are not relevant to this determination.

Reasons

14. The TCPA90 is “an Act to consolidate certain enactments relating to town and country planning...” and it post-dates the RCCA by some 145 years. While asserting that he has a “right to develop”, the appellant does not go so far as to suggest that the construction of houses pursuant to s16 of the RCCA is not now subject to the system of planning control set out in the TCPA90.
15. The term “development” for the purposes of lawful development certificates is defined under s55(1) of the TCPA90 as including the carrying out of building operations in, on, over or under land, or the making of a material change in the use of any buildings or other land. Works and activities exempted from the definition under s55(2) include (c) specified operations by statutory undertakers, but not the construction of dwellings or indeed any works on operational railway land.
16. The appellant has not demonstrated that the proposed construction of a bungalow and associated works would not amount to “development” as defined under s55 or for the purposes of this appeal. There is also no evidence that the requirement to obtain planning permission for the carrying out of any development of land, as set out under s57(1) of the TCPA90, does not apply here. I find that the appellant probably proposes to carry out building and engineering operations plus a material change in the use of the land which would require planning permission.
17. The next question is whether such planning permission has been granted. The appellant does not claim that s16 of the RCCA is itself a form of planning permission, and I am aware of no legislation or court judgment which could be read to that effect. The appellant also has not pointed to any record of permission being granted by the Council via a planning application or an Inspector on appeal for the construction of any kind of dwellinghouse on the site.
18. Planning permission **is** granted under Article 3(1) and Schedule 2, Part 8, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for “development by railway undertakers on their operational land, required in connection with the movement of traffic by rail”. However, that permission is limited under paragraph A.1: “development is not permitted by Class A if it consists of or includes...(c) the construction or erection otherwise than wholly within a railway station of (i)...[a] residential building...” There is no railway station on the site that the proposed bungalow could be wholly within.
19. On the balance of probabilities, the proposed construction of a bungalow and associated works, even if carried out by a statutory undertaker and required in connection with the movement of traffic by rail, would have amounted to development which required but did not have planning permission on 1 November 2023. That finding is enough for me to refuse to grant an LDC, but I shall make two further observations which add weight to my conclusion.

³ It is also necessary that the uses or operations do not constitute a contravention of any of the requirements of any enforcement notice in force, but that is not relevant here.

20. Firstly, the appellant has failed to demonstrate that he is a statutory undertaker as defined under s262 of the TCPA90. He has not shown that he is authorised by enactment to carry on any railway undertaking⁴. The Railway Act 1993 provided for the transfer or disposal of undertakings or properties, rights and liabilities. The appellant has not submitted his acquisition papers which might reveal whether he was in fact sold a railway undertaking as well as the land comprising the appeal site.
21. Secondly, there is no evidence that the proposed construction of a bungalow and associated works would probably be “for the purpose of constructing the Railway or the Accommodation Works connected therewith” or “required in connection with the movement of traffic by rail” in s16 and GPDO terms. Even if the appellant was authorised to carry out any works or activity for railway purposes on the site, it would not automatically follow that the proposed bungalow would amount to such.
22. From the foregoing, I struggle to see the relevance of s264(3) of the TCPA90. It provides that land may be treated as operational land if it is held by a statutory undertaker for the purpose of carrying on their undertaking, they acquired the interest on or after 6 December 1968, and planning permission is or has been granted for development involving use for the purpose of carrying on the undertaking. That cannot assist the appellant where there is no evidence that he is a statutory undertaker or that any such planning permission has been granted.

Conclusion

23. As the landowner, the appellant has the “right to develop” the site as he claims, but subject to planning control as set out in the TCPA90. He tacitly accepts that the TCPA90 sets out the relevant statutory framework because he made this appeal under its provisions. Yet he has not demonstrated that, whether because of the RCCA or any other legislation, the proposed development would have been lawful in the terms set out in s191(2) of the TCPA90, on the balance of probabilities, if it had been begun on the date of the LDC application.
24. I conclude that, if the proposed construction of a bungalow and associated works had been begun on 1 November 2023, development would have probably taken place which required but did not have planning permission. The Council would have been able to take enforcement action against the operational development and associated material change of use of land. It follows that, if the Council had refused to grant an LDC for the development described fully on the application form, such a refusal would have been well-founded. The appeal should fail, and I will exercise the powers transferred to me under s195(3) of the TCPA90 to dismiss the appeal.

Jean Russell

INSPECTOR

⁴ The term “operational railway land” is defined under s263(1) and s264(1) as meaning that land that **is** – present tense – used or held by a statutory undertaker for the purpose of carrying on their undertaking. While the lawfulness of that defined use of the site is conclusively presumed as a result of the 2021 LDC, neither that certificate nor the attached decision letter expressly addresses whether the appellant has statutory undertaker status. I have not seen the evidence before the previous Inspector.