



Appeal Decision

Site visit made on 10 December 2025

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th December 2025

Appeal Ref: APP/P0240/X/24/3348246

Former Pumping Station at Chapel Farm Luton Road, Chalton, Luton LU4 9UJ

- 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.
 - The appeal is made by Mr M Musial against the decision of Central Bedfordshire Council.
 - The application ref CB/23/03132/LDCE, dated 18 September 2023, was refused by notice dated 19 January 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 confirmation that planning permission SB/TP/81/00305 dated 20 May 1981 has been commenced and the permission is extant.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Section 191(1) of the Town and Country Planning Act 1990 (the 1990 Act) states that for the purposes of this Act, if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.
3. In this type of appeal, the burden of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as a certificate of lawful use or development (LDC) application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
4. The planning merits are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. I must examine the submitted factual evidence and apply relevant law or judicial authority to the circumstances of this case.

Main Issue

5. The main issue is whether the Council's refusal to issue an LDC was well-founded. This turns on whether the evidence demonstrates, on the balance of probabilities, that the works approved had lawfully commenced in accordance with the permission before its expiry in May 1986.

Reasons

6. The appeal relates to a modest sized former pumping station. Planning permission SB/TP/81/00305 was granted on 20 May 1981 for an extension to the front of the building and the change of use to a double garage for domestic purposes (the 1981 permission). The time limitation condition required the development to be begun within 5 years of the date of the permission.
7. The appeal seeks an LDC to confirm that development approved by the 1981 permission was lawfully begun through the laying of foundations, and that the permission therefore remains extant. It is common ground that no pre-commencement conditions were attached to the permission.
8. The appellant asserts that foundations were laid in accordance with the 1981 permission prior to its expiry on 19 May 1986. However, the Council considers that it has not been sufficiently demonstrated, on the balance of probabilities, that a material operation constituting development pursuant to Section 56 of the 1990 Act was undertaken so as to lawfully commence the 1981 permission.
9. Section 56(1) of the 1990 Act states that subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—(a) if the development consists of the carrying out of operations, at the time when those operations are begun.
10. Section 56(4) clarifies what is meant by 'material operation' for the purposes of commencing development and this includes: (a) any work of construction in the course of the erection of a building; (b) the digging of a trench which is to contain foundations, or part of the foundations of a building.
11. The appellant's statement explains that, following the grant of the 1981 permission, the previous owner of the appeal site submitted an application to the Council's Building Control department. This application, referenced SB/BR/85/05771, was dated 26 June 1985 and described the development as the "conversion of pumping station to double garage".
12. A decision was issued on 15 July 1985. The appellant argues that the approval of this application and the likelihood of a site inspection indicate an intention to commence building works, which they consider to be standard practice following a building control submission.
13. The Council's record confirms that an application was submitted. However, it notes that details of the Building Control Officer are not available and that the record indicates the first commencement date as "not commenced" and the status as "decided". While this demonstrates that a building control application was likely made, it does not provide evidence that any physical works were carried out. Consequently, I attribute limited weight to this as proof of development having commenced.
14. The appellant's notarised statutory declaration dated 2 August 2023 refers to their observation of a site plan, the 1981 permission, photographs of the building, and a copy of the building control record. It concludes by stating that "It is my understanding that the foundations were constructed in 1985". The declaration, however, does not provide first-hand evidence of development taking place within the time limitation. Accordingly, I afford it limited weight.

15. Photographs dated 10 June 2023, following clearance of the site's overgrown frontage, appear to show the foundations with a top brick course in place, laid in accordance with the approved plans. The appellant refers to the manufacture of the bricks relating to the time when they were laid and their style being no longer available. However, no evidence is provided to support this claim.
16. A topographical survey drawing has also been supplied. The appellant's covering letter for the LDC application says this was carried out on 4 March 2022, whereas their appeal statement refers to July 2022. Notwithstanding the confusion about the date, I have no reason to dispute that the survey drawing, in conjunction with the site photographs, confirms that foundations have indeed been laid. However, this does not sufficiently demonstrate that these were laid within the time limitation for the 1981 permission.
17. There is no disagreement between the parties that laying foundations can constitute a "material operation" for the purposes of s.56(4) of the 1990 Act. However, in this case, the evidence presented in support of the appeal is not sufficiently precise and unambiguous to demonstrate that the development had begun within five years of the date of the 1981 permission being granted. Whether or not the Council previously referred to the permission being extant when providing pre-application advice for another matter on the appeal site has limited bearing on this LDC. My determination must be based on the presented facts.
18. In the event that the appellant can present more substantial and cogent evidence, it would remain open for them to make a further submission with a more detailed LDC application. It would then fall for the Council to reassess the claim.

Conclusion

19. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR