



Appeal Decision

Site visit made on 29 April 2026

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2026

Appeal Ref: APP/B2355/X/24/3357327

Sowclough Farm, Sowclough Road, Stacksteads, Bacup, Lancashire, OL13 8LB

- 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 James Phillips against the decision of Rossendale Borough Council.
 - The application ref 2024/0409, dated 10 October 2024, was refused by notice dated 10 December 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 described as: material operations relating to the agricultural building under application 2020/0206 have begun prior to the expiration date of that application, giving rise to a lawful material start to the approved development.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have taken the description of the development for which a Certificate of Lawful Use or Development (LDC) is sought from the appellant's application form and planning statement. The LDC is sought to certify the commencement of construction of the agricultural building deemed to have been granted under application 2020/0206. I consider this to be a more accurate description than that of 'agricultural building' which was on the Council's decision notice, because the agricultural building has not been built.

Application for costs

3. An application for costs has been made by Mr James Phillips against Rossendale Borough Council. This application is the subject of a separate decision.

Main Issue

4. Section 191(4) of the Town and Country Planning Act, 1990, as amended (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matters described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal, and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well

founded. In this case that turns on whether the works that have been carried out constitute a commencement of development.

5. It is established case law that the appellant's evidence does not need to be corroborated by 'independent' evidence for it to be accepted. In the event that there is no evidence to contradict the appellant's version of events, an LDC should be issued. However, the appellant's own evidence must be sufficiently precise and unambiguous to justify a grant of an LDC, on the balance of probability.

Reasons

6. There is no dispute between the parties that the agricultural building the subject of a prior approval application dated 7 May 2020 benefitted from a deemed grant of planning permission by reason of the local planning authority not notifying the applicant of their determination within the requisite 28 days. It is also agreed that the applicant excavated a trench and laid a pipe on the appeal site on 9 October 2024 and prior to those works, during 2023, an area of hardstanding was also laid. The local planning authority do not dispute that those works constitute operational development, nor those works were carried out within five years of the date of the grant of planning permission under Article 3, Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).
7. It is the appellant's case that those works constitute a commencement of development and thus the grant of planning permission for the agricultural building is extant. On the other hand, the Council do not consider that the works that have been undertaken on the appeal site relate to that of the agricultural building.
8. Section 56 of the Act sets out what actually constitutes a start of development for the purposes of when a planning permission is taken to be begun, and the relevant date is the date on which a "material operation" **comprised in the development**¹ is carried out. A "material operation" is defined in S56 (4) as:
 - (a) any work of construction in the course of the erection of a building;
 - (b) the digging of a trench which is to contain the foundations, or part of the foundations of a building;
 - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
 - (d) any operation in the course of laying out or constructing a road or part of a road;
 - (e) any change in the use of any land which constitutes material development.
9. It is established case law that the threshold for what is deemed to be a "material operation" is low, and the Council do not appear to dispute that the laying of a pipe in a trench could be a material operation in this case so long as those works were comprised in the development of the agricultural building.

¹ Bold text is my emphasis.

10. The agricultural building gained deemed planning permission on 9 May 2020, when the application for prior approval was submitted and requisite fee paid². The application was made by Mr James Phillips with the agricultural building to be used for the storage of agricultural equipment, machinery and hay³. It is understood that access to the building would be gained through the grounds of Sowclough Barn. In early 2023, a large area of hardstanding was laid in the location of the proposed agricultural building. This hardstanding is retained by concrete panels and has been constructed around a septic tank which encroaches onto the site of the proposed agricultural building. The appellant contends that the laying of this hardstanding is comprised in the development of the agricultural building and should be considered as the laying out or constructing a road/access to it, in accordance with the provisions of S56 (4) (d) of the Act⁴. However, from the evidence before me, the hardstanding was laid by the owner of adjacent Sowclough Barn and formed part of a retrospective application for residential use, creation of a hardstanding and erection of a private stable block⁵. That application was subsequently withdrawn. A further application was then made for the change of use of agricultural land to residential use (C3) for Sowclough Barn, including the levelling of the site and formation of associated areas of crushed stone and a further area of permeable tarmac, erection of a 1m post and rail fence, and the creation of bank and planting (retrospective)⁶. This application was refused in March 2023.
11. The planning history of the site and the evidence before me, including observations on my site visit, lead me to the conclusion that the permeable tarmac has been laid as a driveway and parking area to serve the occupiers of Sowclough Barn. Furthermore, the hardstanding was clearly laid down as part of the owner of Sowclough Barn's desire to gain a residential use of this part of the site, ancillary to the residential use of his adjoining property as opposed to commencing and comprising part of the development of the agricultural building. I am also mindful that the area of hardstanding created is not of sufficient depth to provide a base for the agricultural building and has been constructed around the septic tank which itself encroaches into the site of the proposed agricultural building. Whilst I accept that the land levels could be subsequently changed, the size of the hardstanding laid does cast doubt on the appellant's assertion that it was laid as part of the development of the agricultural building.
12. Considering all of the above, the evidence is not sufficiently precise and unambiguous for me to conclude, on the balance of probability, that the laying of the hardstanding is comprised in the development of the agricultural building.
13. More recently a trench has been dug on the site. The trench was dug by a mechanical digger and is understood to be five metres in length and one metre deep and to contain a pipe. The appellant's statement of case includes a plan showing the location of the drain and shows it sited adjacent to the proposed eastern elevation of the agricultural building. However, it is clear from the photographic evidence submitted with the appeal, that the trench and pipe were laid further to the west, and in a location which is directly underneath the site of the proposed building. Whilst the laying of a pipe and digging of a trench could

² Class A.2 (2)(d)(vi)(bb), Part 6, Schedule 2, Article 3 GPDO.

³ Planning Statement accompanying prior approval application, LPA Ref: 2020/0206.

⁴ Page 5, Appellant's Appeal Statement.

⁵ Local Planning Authority Ref: 2022/0303, Withdrawn..

⁶ Local Planning Authority Ref: 2023/0005, Refused March 2023.

constitute a material operation, for the development of the agricultural building to have begun, that material operation must be comprised in that development. In this case, I have not been provided with any evidence to demonstrate why a drain laid beneath an existing hardstanding would be comprised in the construction of the agricultural building. For example, the pipe is not in a location where there would be foundations or where surface water would be drained from a roof to a soakaway.

14. Consequently, given the ambiguity in the appellant's statement of case over where the drain has actually been laid, and without knowing for what purpose the pipe is needed for in the location it has been laid to serve the agricultural building, the appellant's evidence is not sufficiently precise and unambiguous for me to ascertain, on the balance of probabilities, that the material operation that has been carried out is comprised in the development of the agricultural building. The appellant's simple assertion that it was laid for the purpose of keeping the permission alive does not alter my view that the development undertaken is not comprised in the development of the agricultural building.

Other Matters

15. I have had regard to another Inspector's decision regarding an LDC for the commencement of construction of a dwelling at Green Street⁷. However, a LDC is fact sensitive, and whilst there is no dispute in this case that a material operation has been carried out, the evidence is not sufficiently precise and unambiguous to conclude, on the balance of probability, that those operations are comprised in the development of the agricultural building.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of material operations relating to the agricultural building under application 2020/0206 having begun prior to the expiration date of that application, giving rise to a lawful material start to the approved development is 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).

Elizabeth Pleasant

INSPECTOR

⁷ APP/B2355/X/20/3257581.