



Appeal Decision

Site visit made on 27 May 2026

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 8th June 2026

Appeal Ref: APP/D1265/X/25/3359248

6 Albert Road, DORCHESTER, DT1 1SF

- 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 Tapper and Son (Poole) Ltd against the decision of Dorset Council.
 - The application ref P/CLP/2024/02687, dated 13 May 2024, was refused by notice dated 23 July 2024.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use or development for which a certificate of lawful use or development is sought is to confirm that planning permission 1/E/87/137 remains extant.
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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 operation which is found to be lawful.

Reasons

2. There is a rather complicated back history to the site which has a direct bearing on the appeal. The site is a detached Edwardian style villa on a generous corner plot. In 1987 planning permission¹ was granted to convert the building into 3 flats and build a large extension to the side containing 6 new flats. There is no dispute that this planning permission was commenced, but the 6 flat extension was never built. An LDC² to confirm that the planning permission was still extant was granted in May 2023. Following this another planning permission³ was granted to erect a garage, bike and bin stores, a first floor extension and other alterations to the building in August 2023. The objective of the last planning permission was to enable the building to continue to operate as a funeral parlour.
3. The appellant argues that as the 2023 planning permission has not been implemented in full, the garage has not been built, it is still possible to implement the 1987 planning permission and build the extension for the 6 flats. No physical works have been undertaken that prevent the extension from being built. From my site visit this appeared to be the case. The large extension would project from the western (side) elevation of the property and cover an area currently laid to lawn. This would seem to involve the demolition or alteration of the existing mostly single storey side extension, but this would have been the case in 1987. Minor alterations to the fenestration of this elevation have been made in accordance with the 2023 planning permission but the whole side of the building would be swept away and replaced by the extension in any event.

¹ 1/E/87/137

² P/CLE/2023/01953

³ P/FUL/2023/01834

4. This all seems to be accepted by the Council. However, they contend that notwithstanding that the extension could still be built, the commencement of the 2023 planning permission marked a new chapter in the planning history of the site which superseded the 1987 planning permission which is now spent. It is true that the building has changed somewhat since the 1987 planning permission was granted. In particular the rear of the building originally was 'L' shaped and some time since 1987 a single storey extension filled in the corner of the 'L'. The 2023 planning permission allowed this to become a 2-storey extension which has been built. This has made the western, side, elevation longer than before and it is a fact the plans for the 1987 planning permission do not show this extension and so the 1987 building cannot be built exactly as shown on those plans.
5. The rest of the changes related to the 2023 planning permission are either internal rearrangements to create 2 flats above the funeral parlour or minor other works. There has been a lean-to added to the rear of the building that does not appear to have planning permission, but I agree with the appellant that is effectively a temporary structure that could easily be removed and is on a different elevation. The appeal thus turns on the weight to be ascribed to the Pilkington principle as opposed to the idea of the new chapter in the planning history.
6. The Pilkington principle stems from the court case⁴ that held the land could be subject to any number of planning permissions. Permission B could only not be implemented as well as permission A if the building of A made it physically impossible to build B. This was further elucidated in *Prestige Homes*⁵, that held that even if B was incompatible with A, as long as it could be physically built it was still valid. The whole issue was gone over in detail in the *Hillside*⁶ Supreme Court case that reinforced the interpretation of Pilkington and *Prestige homes* above.
7. A word of caution was inserted by *Choice Place Properties*⁷, where it was held a planning permission could not be implemented because the streetscene plans were wrong and so it was impossible to build it out as shown on the plans. However, the streetscene plans were fundamental to the Council's decision to approve the building in the first place as they showed that the height of the building relative to its neighbours fitted into the sloping street. In reality the building was under-scaled so it would actually be taller than the uphill neighbour and tower over the downhill neighbour.
8. All of this has a direct bearing on the idea of the new chapter in the planning history. A new page is turned only when there has been a radical change in the nature or uses of the buildings on the site. The Court of Appeal in *Jennings*⁸ held that as a matter of fact and degree there would need to be a total change in physical nature of the premises which was inconsistent with the preservation of the prior existing use. This case concerned uses rather than buildings but it can be seen the two approaches are complementary. Something significant has to happen to extinguish existing development rights. In the case of a use, that would be a radical new change and in the case of buildings, something that physically prevented the development going ahead.

⁴ *Pilkington v SSE & Lancashire CC* [1973] 1 WLR 1527; [1973]

⁵ *Prestige Homes (Southern) Ltd v SSE & Shepway DC* [1992]

⁶ *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30

⁷ *Choice Place Properties Ltd v SSHCLG & LB of Barnett* Case No: CO/1756/2020

⁸ *Jennings Motors Ltd v SSE & New Forest DC* [1982] JPL 181

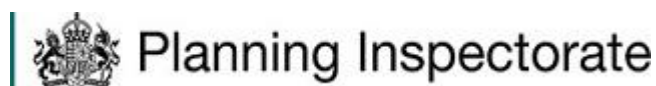
9. This appeal concerns both uses and buildings but it seems to me that neither the uses nor the physical constraints of the site are such that the 1987 planning permission can no longer be implemented. Obviously at some point one planning permission will supersede the other. If the garage is built then the 1987 planning permission will no longer be possible but if the 6 flat extension is built the 2023 planning permission will clearly be superseded, but at the moment it is possible for the appellant to continue to operate the funeral parlour under the 2023 planning permission while keeping the 1987 flat planning permission up his sleeve, so to speak.

Conclusion

10. I shall allow the appeal and issue an LDC as applied for.

Simon Hand

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 13 May 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: there is no physical impediment to the implementation of the planning permission

Signed

Simon Hand

Inspector

Date: 8th June 2026

Reference: APP/D1265/X/25/3359248

First Schedule

That planning permission 1/E/87/137 remains extant.

Second Schedule

Land at 6 Albert Road, DORCHESTER, DT1 1SF

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule. Any use /operation 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.