



Appeal Decision

Site visit made on 8 June 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 16th June 2026

Appeal ref: APP/W4325/X/25/3369229

3 Hillside Road, Newton, Wirral CH48 8BD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Wirral Metropolitan Borough Council to grant a certificate of lawful use or development.
- The appeal was made by Mr M Bridge.
- The application dated 15 February 2024, Council ref: LDP/24/00202, was refused by a notice dated 17 February 2025.
- The Application was for: Lawful Development Certificate to establish lawful implementation of planning permission ref. APP/18/01026, (Re-submission of application ref. LDC/21/01967).

Summary of decision: The appeal fails. A Certificate of Lawfulness is not issued

Appeal site

1. The appeal site is much of the original rear garden of the detached dwelling at No. 3 Hillside Road in the residential village of Newton in the Wirral. The site is accessed along a strip of land on the south side of No. 3.
2. Works to excavate a roughly cuboid hole or pit have been carried out within the application site, close to the centre of the land.

Application

3. Wirral Metropolitan Borough Council issued planning permission ref. APP/18/01026 on 11 October 2018 for the erection of a detached two-storey dwelling on the rear garden appeal site at No. 3.
4. The appeal was made by Mr M Bridge following the refusal of the Council to issue a lawful development certificate, (LDC), to confirm the lawful implementation of planning permission APP/18/01026. Mr Bridge's assertion was that the permission had been implemented, as shown by works carried out on the application land in the period covered by time limited planning condition No. 1 to the 2018 permission. A timber fence had been erected on the line of the boundary between the application land and the remaining part of the rear garden of No. 3.

The Applicant - Mr Bridge

5. Planning permission APP/18/01026 for the construction of a detached two storey dwelling on the appeal site land at the rear of No. 3 Hillside Road, was approved by the Council on 11 October 2018. Six planning conditions were attached. Condition 1 required the development to be commenced before the expiration of 3 years from the date of consent, that is, by 11 October 2021.
6. The Council had not contested that an excavation hole about 900mm long, 800mm wide and 900mm deep was dug within the time limit of Condition 1, that is before 11

October 2021. It was agreed that the excavation was made at the centre of the development site at a T-junction of 2 foundations to the APP/18/01026 proposed dwelling.

7. Mr Bridge said that the operations consisting of the excavation described above had constituted a 'material operation' as defined in s.56(4) of the Act. The operations had been sufficient to have lawfully implemented planning permission APP/18/01026 by virtue of the initial excavations and associated works in preparation for the foundations of the new dwelling, together with the 2100mm high timber boundary fence which formed part of the planning permission scheme.

Local Planning Authority - Wirral Metropolitan Borough Council

8. The Council said the excavation, singular and of small size and scale, was no more than de minimis. Also, the fence as erected did not form part of the original permission. The works were not evidence of implementation. The hedge was sufficient boundary treatment and as such the fence was not considered reasonable and necessary for the implementation of the permission. It was not incorporated within the general grant of consent. The boundary fence was not a 'material operation' - s.56(4) of the Act.

Inspector's considerations

9. Condition 1 to planning permission APP/18/01206 said the development shall be begun before the expiration of 3 years from the date of the permission. As the application for the erection of detached two-storey dwelling was approved on 11 October 2018, a start had to be made before 11 October 2021. It was not disputed that the excavation, described in para 6 above, was carried out one day before the expiration of the APP/18/01206 planning permission. I need to determine whether that excavation work was sufficient to have constituted a 'material operation' under s.56(4) of the Act,
10. The general starting point is that to commence development, a material operation has to be (i) in accordance with the planning permission, and (ii) more than minimal. Any works carried out to implement a planning permission must comply with the approved drawings listed in the planning permission. For example, in *East Dunbartonshire Council v Secretary of State for Scotland* (1999) and *Riordan Communications Ltd v South Bucks District Council* (2000) the Courts accepted that relatively small-scale works could still amount to commencement provided they form part of the approved development. However, the works must still be genuine material operations connected to the permitted development. While the threshold for commencement is relatively low, it is important that the works undertaken are actually part of the development authorised by the planning permission.
11. The question is typically one of fact and degree. Simply carrying out unrelated works on the site will not be sufficient.
12. In my view, the excavation as described above, whilst timely with regards to the 3 year limitation in condition 1 to the 11 October 2018 APP/18/01026 planning permission, more resembled a trial pit exploring ground conditions to aid foundation design, rather than an excavation recognisable as the start of works as shown on the approved drawings. The excavation under consideration here cannot be properly said to have been undertaken pursuant to the grant of the planning permission in question. Nor was it on a scale that could be regarded as a material operation that tied in with the permitted scheme.

13. The almost 1m³ excavation does not correspond to the approved plans. It may have been, as Mr Bridge said, on the line of a proposed foundation junction, albeit as would be for a trial pit. Otherwise, it did not appear to form any part of the permitted scheme, as might have been for the digging of a trench to contain the foundations, or part of the foundations of the building - s.56(4)(b) of the Act. Nor do I find that the erection of a fence separating the changed ownership of the rear garden application land from the house and its garden at No. 3 fronting on to Hillside Road was part of the planning permission APP/18/01206 scheme. It simply divided the land ownerships.

FORMAL DECISION

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made was well founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

INSPECTOR