
Appeal Decision

Site visit made on 7 July 2026

by Grahame J Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2026

Appeal Ref: APP/P2935/X/25/3376543

The Dairy, Callerton Hall Drive, High Callerton, Northumberland NE20 9TT

- 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 Vincent Slade of Slade Roofing against the decision of Northumberland County Council.
 - The application ref 25/03939/CLEXIS, dated 3 November 2025, was refused by notice dated 14 November 2025.
 - 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 foundation works as commencement of planning permission for stable block ref 16/03055/FUL.
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Decision

1. The appeal is dismissed.

Main issue and reasons

2. Section 191(2) of the 1990 Act states that a use is lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and it does not constitute a contravention of the requirements of any enforcement notice then in force.
3. The main issue is whether the Council's refusal to grant an LDC was well-founded, irrespective of the reasons they gave. Planning merits are not relevant. The onus of proof is on the appellant on the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence, but the evidence should be sufficiently precise and unambiguous.
4. The appeal relates to planning permission ref 16/03055/FUL, granted on 15 November 2016 for a single-storey L-shaped stable and store building. When I visited the foundations of the building had clearly been laid and a couple of courses of breeze blocks were evident above ground level, although it was difficult to tell at what date these works had been constructed.
5. The case for the appellant is that a start on site was made before expiry of the time limit for commencement of the permitted development, ie before the end of 15 November 2019.
6. The case for the Council is that the evidence is insufficient to justify a finding that development was commenced within the statutory time limits, and secondly, the development was not erected in the position shown on the approved plans.

7. Taking the latter point first, submitted in this appeal was a topographical survey, said to provide proof that the situation “on site” is in accordance with the permission granted. I have had difficulty reconciling that and the other submitted drawings with the actual position on the ground and the situation is not helped by the fact that, as the appellant accepted, the approved plans were not exactly accurate with regard to existing adjoining site features.
8. The variations are noted in the Council officer’s report. However, given the context of the appeal site and its surroundings, I am not persuaded that the differences recorded by the Council would have amounted to a variation so significant to justify a finding that the permission was never implemented (because a significantly different development was built out, ie so significantly that the planning permission originally granted is no longer extant)¹. However, it is unnecessary for me to make a finding on that matter, given my conclusions on the evidence described below.
9. The statement of FD dated July 2025 claims to be a statutory declaration. In fact, although it is sworn before a licensed conveyancer, a person who is indeed entitled to administer oaths of this nature, it lacks several of the requirements as set out in the Statutory Declarations Act 1835. FD states that she:

“authorised the foundation trenches to commence and instructed a company called Titan to do this to commence the scheme approved as Northumberland County Council reference: 16/03055/FUL. They commenced the foundation work in October 2019 and deliberately completed the foundation element in early November 2019, before the permission ran out on 16 November 2019.”
10. Although PD states that she was the owner between August 2017 and September 2023, there is no context provided as to her involvement, for example when and how she was, if at all, present on site at the time it is stated those activities took place. There is no evidence from the company called Titan or for example invoices that might give a more exact date. There is no appended plan to identify the exact location of the site or where the trenches were dug. FD identifies the permission for the building by citing its reference number and stating she was aware of it.
11. Secondly, a statement from MG was made in November 2025, also purporting to be a statutory declaration but lacking the necessary formalities. He states that he was an associate of FD between August 2017 and September 2023, and “*was aware*” that FD had authorised the digging of foundation trenches and was “*aware that a further contractor Shaun Nicol Landscaping was involved in Excavation and Digging [sic] work during September 2019.*” He also states that work commenced on the foundations in October 2019 and was “*completed early November 2019 prior to expiry of planning approval on 16/11/2019.*”
12. Thirdly, there is a statement from SN of Shaun Nicol Landscaping, made in July 2025, also purporting to be a statutory declaration but lacking the necessary formalities, wherein he states that he was “*owner between 2015 and to date.*” He states that he “*instructed my staff to excavated [sic] foundation trenches at points marked RED on the attached plans and I used an* ton [sic] digger and a 6 ton dumper in September 2019.*”

¹ As was pointed out in *Commercial Land Ltd v SSTLGR [2002] EWHC 1264 (Admin)* 253, when considering whether works amount to a material operation for the purposes of s56(2), it is not enough to list or measure any differences between what is on the ground and on the plans. The significance of the differences plus the similarities between what was done and approved must also be considered.

13. It is unclear what “*points marked RED*” refer to in the plans attached to the statement, which is not as carefully drafted as it might be, but it is assumed to refer to the plan showing the L-shaped footprint of the building edged red. As to this, the Council notes that the plan relates to the application as approved under ref 16/03055/FUL, rather than the foundations as currently built out on the site.
14. There is some ambiguity over the stated commencement date of the works as to whether it was October 2019 or September 2019 albeit that both dates would be within the period for a material operation to be undertaken to such that the development would then be taken to be initiated. Indeed, it is curious that the statements focus in a coordinated way on when the foundation work was completed rather than when it was started. As to when development is begun s56(4) lists several possibilities of what constitutes a “material operation” including—
- “...(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;”*
15. The Council recognises² that it is the *commencement* of foundation development works that is key but doubts whether this took place within the 3-year period, since beyond the hand-altered plan no further information has been provided such as invoices, receipts, photographs or other evidence indicating the start of works. I agree that precision is lacking in the statements. I also accord them less weight than I would have done had they been, as they profess to be, properly completed statutory declarations³.
16. Reviewing all the information submitted in this appeal, I agree with the Council’s conclusion that the appellant has failed to provide sufficient evidence to demonstrate, on the balance of probabilities, that commencement of planning permission for stable block ref 16/03055/FUL was initiated before the end of 15 November 2019.

Conclusion

17. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or 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).

Grahame J Kean

INSPECTOR

² Officer’s report, paragraph 7.9

³ See Statutory Declarations Act 1835, section 20 and the annexed schedule.