The Planning Inspectorate

Appeal Decision

Site visit made on 9 November 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 16 November 2026

Appeal ref: APP/W2465/X/25/3374782
Land at Highcross Street, Great Central Street and All Saints Open, Leicester LE1 4PH

- 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 the failure of Leicester City Council to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development, (LDC).
- The appeal was made by Urbanite (Leicester) Limited, (the Applicants).
- The LDC application ref: 20251156 is dated 9 July 2025.
- The Application for a Certificate of Lawfulness for an Existing Use or Development is to certify that planning application reference 20222242 was lawfully commenced via a material operation. The material operation comprises the digging of a trench to a future foundation of the building.

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

Appeal site and planning application Nos. 20210523; 20222242

1. Leicester City Council described the application site as located between Highcross Street to the east, Great Central Street to the west and All Saints Open to the south. The site is unused and overgrown land tightly constrained by those roads.

2. Planning Application 20210523 for the construction of purpose-built student accommodation (Sui Generis) with communal ancillary space and roof terrace (Amended plans) (S106 agreement) for the development of the LDC application site was approved on 12 August 2022. Condition 1 of that permission says: '*The development shall be begun within three years from the date of this permission*. The Council said as the application was approved on 12 August 2022, the expiry date of the permission was 12 August 2025.

3. Planning application No. 20222242, dated 11 January 2023 was for: Variation of conditions 3 (accommodation approved), condition 4 (approved heights), condition 10 (cycle parking), condition 13 (SuDs), condition 19 (sustainability measures), condition 21 (Noise and ventilation), condition 24 (waste management) and condition 27 (approved plans) attached to planning permission 20210523 (Construction of purpose built student accommodation (Sui Generis) with communal ancillary space and roof terrace. (Amended plans) (s.106 agreement)): To increase number of student rooms, add a sub-station, reconfigure the entrance and communal space, move and increase size of plant room and cycle store, adjust bin store, revise the drainage energy strategy and noise/ventilation strategy. (s.106 agreement). Planning permission 20222242 was subject to 27 conditions, including Condition 1. - The development shall be begun by 12th August 2025.

4. The planning permission was also subject to 3 pre-commencement conditions, Nos. 5, 6 and 14. Applications seeking approval of details reserved by the 3 conditions were approved by 10 June 2025.

5. The LDC application therefore deals with the compliance or otherwise with Condition 1 to planning permission, (application No. 20222242), dated 29 December 2023, requiring that the development shall be begun by 12 August 2025.

Considerations

The Applicants

6. The Applicants, Urbanite (Leicester) Limited, said operational development work to excavate a T shaped trench was carried out by 12 August 2025. It was sufficient to have amounted to the implementation of planning permission No. 20222242 for the student accommodation building on the application land. The Council did not contest that this work had been carried out before the expiry of the planning permission.

7. Reference was made to Court case decisions dealing with similar issues as here. In *Whitley and Sons v. Secretary of State for Wales* (1992) 64 P.& C. R. 296 (1992) it was established that development must be undertaken in accordance with the planning permission to constitute lawful commencement. Works that deviate materially from the approved plans do not lawfully implement a permission.

8. The Applicants claimed the trench excavation was undertaken fully in accordance with approved ground floor plan 4, satisfying the *Whitley* test. The Court of Appeal in *Malvern Hills District Council v Secretary of State for the Environment & Another* [1982] JPL 439 (1982) established that little development needs to take place to enable a development to be begun - s.56(2) of the Act. The Court accepted that accurately pegging out part of an approved estate road could amount to an operation in the course of laying out or constructing a road. However, the operation had to be genuinely carried out as part of the development permitted rather than as a sham or token exercise. The test to be applied was not about the amount of work involved but whether it was related to the planning permission involved. Also, in *Thayer v Secretary of State for the Environment v Wycombe DC* (1991) the Court of Appeal held that opening a 12 ft gap in a hedge and limited ground works were sufficient to constitute a commencement of development. In that, Purchas LJ stated: "*The specified operations are not necessarily extensive. Very little need be done to satisfy the section. That which is done, however, must genuinely be done for the purpose of carrying out the development.*". The Applicants said that was similar to the situation here.

Leicester City Council

9. The T trench was said have been dug using a pickaxe. That method for digging the trench would be completely different to that conventionally used for a building of this size and scale. The works clearly did not relate to any construction process that would have been undertaken on the site if the development on the approved scheme was started. The Council's Building Control team response outlined that the trench dug would likely not be suitable for the approved development and would need calculations to support it. They confirmed that the development was not commenced in relation to regulation 16 of the Building Regulations. The foundation design for a development of this nature would need to be confirmed by a qualified Structural Engineer. That had not been provided.

10. It appeared that the trench dug on site would not be suitable as foundations for a building this size. It was likely that the trench would need to be deeper and wider in order to be suitable for the approved 8 storey building. Whilst commencement under the Building Regulations and under s.56 of the Act were different, it was evident that the trench dug on site did not materially relate to planning permission 20222242. It could not be considered a commencement of that approval.

Inspector

11. During my inspection, I saw that trenches had been dug near the site entrance from Great Central Road. They were said by the Applicants to have been hand excavated in a T shaped form having been dug out on 21 June 2025 within the proposed foundation area of the students' accommodation building. The Applicants said the trench measured 4m x 3m at some 600mm deep. It was to accommodate a ground beam, part of the supports to a ground floor slab and the external walls in that part of the proposed building.

12. I sought to match the trenches dug in the land with the claimed T shape as shown in red on submitted plan 088-ROS-00-FN-GA-S-01125 Rev C02 Foundation GA - Selected Ground Beams. I could not. The plan shows the T shape close to the site entrance about half way along the site's western boundary. The trenches I saw were further into the site and slightly to the south but they also formed no discernible pattern or shape that matched the proposed ground beam locations shown on the application plans.

13. I agree with the Applicants that the Courts have consistently confirmed that little work is required to commence development for the purposes of planning legislation. In addition to the cases referred to above, in *East Dunbartonshire Council v Secretary of State for Scotland & Ors* Nov 3 1998 and *Riordan Communications Ltd v South Bucks District Council (2000)* QBD, the Courts accepted that relatively small-scale works could still amount to commencement provided they form part of the approved development. But the works must still be genuine material operations connected to the permitted development. The works undertaken have to be actually part of the development authorised by the planning permission. In my view, as a matter of fact and degree, the roughly cut trenches on the application land failed that test. The Applicants may be right to say that the method of excavating the trenches is not determinative. But here, the trenches had no recognisable pertinence to the approved plans layout, appearing to have been hand dug without any site ground preparation as would be suited to the construction of a multi-storey building. Neither was there any indication of appropriate marking out of the land as would be essential to this major scheme, also no levels appeared to have been set for footings or foundation beams. The likelihood would be that, with necessary ground clearing, and the removal of any waste materials arising from earlier site works or demolition and subsequent essential works such as laying blinding over the site, the application trenches would likely need to be filled in prior to carrying out proper ground preparation work and subsequent foundation construction. The trenches as dug would likely be shown to have no utility to the overall scheme and have been no part of the approved layout.

14. According to the developers Construction Environmental Management Plan - The foundation solution for the approved student accommodation building is for mass fill beam and pad. Although the possibility of using piling to support the ground beams and floor slab had been discussed, the Management plan said piling was not expected to be required. But whichever solution is adopted, any prior start on excavating for floor beams would be illogical and conflicting. I would expect the start of work to implement the 20222242 planning permission to be carried out according to a organised programme of works designed and supervised by a suitably qualified and experienced professional structure or civil engineer. I consider the Applicants' trench work on the application site to have amounted to a minimally token act, a virtual sham, not a genuine implementation or start of work of the permitted scheme according to s.56(2) of the Act.

15. I conclude that the minor and ill-fitting excavation work under consideration here cannot be 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. The works that were carried out should have been obviously pertinent to the 20222242 planning permission. They were not. The trenches as dug deviated materially from the approved plans.

Conclusion

16. For the reasons given above, I conclude that the Council's deemed refusal to grant a Certificate of Lawfulness in respect of application 20251156 dated 9 July 2025 that the development has lawfully commenced via a material operation was 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).

FORMAL DECISION

17. The appeal is dismissed.

John Whalley

INSPECTOR