

KIRKLEES METROPOLITAN COUNCIL INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT

Reference no.: 2022/CL/92869/W

Site: 330, Leymoor Road, Golcar, Huddersfield, HD7
4QL

Description: Certificate of lawfulness to confirm valid
commencement of development approved under 2016/90153 for erection of
dwelling on land to rear of 330 Leymoor Road, Golcar within the 3 year time
limit given in condition 1.

Case Officer: Ellie Worth

Decision Reference: EXISTING OPERATIONS GRANT

**I hereby authorise the approval of this application for the reasons set
out in the officer's report and recommendation annexed below in
respect of the above matter.**

Kevin Walton

AUTHORISED OFFICER

Date 11-Jan-2023

Officer report

1. Description of development

The proposal is for a Certificate of Lawfulness to confirm valid commencement of development approved under 2016/90153 for erection of dwelling on land to rear of 330 Leymoor Road, Golcar within the 3 year time limit given in condition 1. The application was granted planning permission on the 23rd March 2016 and according to the agent the development lawfully commenced by the 1st January 2019.

The basis of this application, as set out in the submitted application form is that works commenced to include the demolition of a wall and small outbuilding, the demolition of a large outbuilding and the digging of a foundation trench.

2. Lawful use Certificates

Section 191(1) (a) of the Town and Country Planning Act 1990 (“the Act”) permits any person who wishes to ascertain whether any operations or proposed use of buildings or other land would be lawful to make an application to the Local Planning Authority.

Section 191(2) of the Act provides that uses are lawful if at any time no enforcement action may be taken in respect of them and they do not constitute a contravention of any requirements of any enforcement notice then in force.

3. The Relevant Test

The burden of proof lies firmly with the applicant and the relevant test for whether the use can be deemed lawful is the “balance of probability”.

The applicant’s evidence does not need to be corroborated by “independent” evidence. If the Local Planning Authority have no evidence of their own, or from others, to contradict or otherwise make the Applicant’s version of events less than probable, there is no good reason to refuse the Application, provided the Applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

4. Limitations

A LDC must contain precise details of what use or operations are found to be lawful, why and when. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference specifying what was lawful at a particular date, against which any subsequent change may be assessed.

5. Relevant Planning History

2013/92111 Erection of one dwelling – Granted.

2014/91174 Discharge conditions 3 (materials), 5 (drainage), 6 (drainage), 7 (watercourse) on previous permission 2013/92111 for erection of one dwelling – Approved.

2016/90153 Erection of detached dwelling – Granted.

2019/93527 Erection of one detached dwelling – Refused and appeal dismissed.

6. Evidence Submitted in Support of the Application

- A supporting statement to include evidence of works lawfully commencing.
- Site inspection report by Assent Building Control dated 28/01/2019
- Cover letter from Assent Building Control to Kirklees Council.
- Existing plans.

7. Representations

The application has been advertised by neighbour notification letters and a site notice.

Final publicity expired: 12th October 2022.

As a result of the above publicity, no formal representations have been received.

Enforcement

Concerns have been raised to the Councils Enforcement Team regarding the information submitted within the supporting statement. This includes the fact that the Inspection Report has been submitted without drawings and that the investigation undertaken by the resident shows that the foundation trench excavated by Assent was not where the foundations for the dwelling were eventually excavated and the dwelling walls constructed.

Officer response: The above has been noted however, there is no empirical evidence to back up the claims raised. Therefore, only limited weight can be afforded to this.

8. Assessment

The Local Planning Authority does not dispute the granting of planning permission.

There are a number of matters up for consideration in the assessment of this Certificate of Lawful Development application to establish whether there has been valid commencement of the 2016 permission.

Firstly, it needs to be established whether the work constitutes operations associated with the 2016 permission. In relation to this matter, the work conducted consists of the demolition of a wall and small outbuilding, the demolition of a large outbuilding and the digging of a foundation trench.

In relation to the demolition of a wall and small outbuilding as shown on the existing plans (prior to any development), this has been clearly demonstrated on the aerial photo identified on page 4 of the planning statement. It also states that the works were required by condition 4 and were carried out with the intention of creating the parking spaces for the proposal within the three years of the date of approval.

It was also considered necessary to demolish the wall and outhouse in order to begin construction for the new dwelling.

Secondly, the agent draws attention to the demolition of the large outhouse in which can also be seen on the existing drawings (found within the plans table for the 2016 application). Given that the outhouse lies somewhat on the footprint for the new dwelling this needed to be demolished before any works could begin for the foundations. The outhouse can be seen on the site in 2016, however, appears to have been demolished in 2018. This has been evidenced in photographs on page 7 of the supporting statement.

Alongside the above, the agent has also drawn attention to Section 55 of the Town and Country Planning Act which states that building operations can include the demolition.

Lastly, the application also evidences an Inspection Report from Assent Building Control on the 8th January 2019, in which was followed up by the formal report (dated 28/01/2019). The report includes multiple photos which show that the large outbuilding had been demolished and is evidence that strips of foundations were cut. A trench is also evidenced within Appendix A and it is the agent's opinion that this was laid out to provide foundations for the new dwelling although it is stated no plans were available to the inspector.

Therefore, having taken into account the above, it is considered that on the balance of probabilities that these works were conducted within the relevant timeframe (by January 2019) so as to be lawful.

The remaining factor that needs to be assessed is whether this amounts to valid commencement having regard to the requirements imposed by the conditions on the 2016 permission. In this case, there were no pre commencement conditions to be discharged and therefore the works undertaken to demolish the structures/wall (required partly by condition 4) have been undertaken.

9. Conclusion

By virtue of the above, it is considered that the development commenced lawfully before the permission lapsed on the 23rd March 2019.

It is therefore recommended to grant the certificate on the grounds that on the balance of probabilities a valid commencement was undertaken within the time limit specified under condition 1.

Recommendation – GRANT CERTIFICATE OF LAWFULNES

Decision Authorisation - Delegated Powers

Application Number: 2022/92869

Officer Recommendation: Grant Certificate

On the balance of probability, it is considered that the works carried out before the 26th March 2019 pursuant to planning permission ref 2016/90153 were lawful as they commenced within the 3-year time limit specified in condition 1.

Plans and specifications schedule: -

Plan Type	Reference	Version	Date Received
Application form	-	-	25 th August 2022
Cover letter (confidential)	T167546	-	25 th August 2022
Supporting statement	-	-	25 th August 2022
Site inspection report	Dated 28/01/2019	-	25 th August 2022
Existing plans (submitted under ref 2016/90153)	(PL2) 01	A	25 th August 2022

Dated: 4th January 2022

