

**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.: 2024/CL/91191/W

Site: Land at, Forest Road, Dalton, Huddersfield, HD5 8EU

Description: Certificate of lawfulness to confirm valid commencement of erection of one dwelling approved under 2016/90951 for erection of 27 dwellings and ancillary works within the 3 year time limit given in condition 1

Case Officer: Lee Stoney

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-Jul-2024

Application No: 2024/91191 – Land at Forest Road, Dalton

For - Certificate of lawfulness to confirm valid commencement of erection of one dwelling approved under 2016/90951 for erection of 27 dwellings and ancillary works within the 3 year time limit given in condition 1.

Site Description

The site comprises an area of grazing land that slopes down very steeply from Forest Road towards Ravensknowle Road at the rear/ north west of the site. The site lies within a residential area. There are traditional terraced houses to the north western boundary on Ravensknowle Road that are set down from the site and houses to the south western boundary on Bancroft Avenue/Almondbury Bank. To the north east is no.33 Forest Road and an area of woodland. The southern part of the site adjoins a children's nursery and houses.

Application Proposal

The application seeks to establish whether planning application 2016/90951 is still extant and lawful.

Relevant Planning History

2016/90951 - Erection of 27 dwellings and ancillary works – **Approved**

2018/92938 - Discharge of conditions 3, 5, 6, 7, 10, 13, 15 and 16 of previous permission 2016/90951 for erection of 27 dwellings and ancillary works – **Split Decision**

2022/92849 - Discharge conditions 5, 6, 7 (drainage), 10 (retaining walls/ structures) on previous permission 2016/90951 for erection of 27 dwellings and ancillary works – **Refused**

2023/91942 - Discharge of condition 10 (retaining walls/structures) of previous permission 2016/90951 for erection of 27 dwellings and ancillary works – **Approved**

2023/92563 - Discharge of conditions 5, 6 and 7 (drainage) of previous permission 2016/90951 for erection of 27 dwellings and ancillary works – **Approved**

History of negotiations/amendments received

None

Consultations

This is an application for a Lawful Development Certificate and, for this reason, no consultations are necessary.

Law

The Town and Country Planning Act 1990 Section 55 & 56.

Evidence Submitted

Application is supported photograph evidence of a material operation (see below) having been carried out, namely the construction of a trench for one of the dwellings prior to the expiry of the permission (17 March 2020). Other documents include discharge of condition letters for the pre-commencement conditions.

Assessment:

Section 56 of the Town and Country Planning Act 1990 (as amended) "Time when development begun" states that a "material operation" means:

"(a)any work of construction in the course of the erection of a building;

aa)any work of demolition of a building;

(b)the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

(c)the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);

(d)any operation in the course of laying out or constructing a road or part of a road;

(e)any change in the use of any land which constitutes material development."

(my emphasis added)

I am satisfied from the evidence that a material operation was, namely under S56(b), carried out before the 17 March 2020 on the 13 March 2020. However, at that point in time whilst applications were submitted to discharge the pre-commencement conditions these were not discharged, albeit they were discharged over a number of years of negotiations with the LPA, LLFL & Highways department, last being in December 2023.

Whilst the material operation (the trench) 13 March 2020 was carried out in breach of planning control, no enforcement action can now be taken against it, that operation became immune in March 2024.

In Hammerton¹, Ouseley J said this:

" " Whitley dealt with circumstances where the necessary approvals of details were sought and did go through all the relevant statutory procedures. It would have been irrational for the Council thereafter to have thought it expedient to take enforcement proceedings.

I consider that the principle discernable in Woolf LJ's reasoning is

¹ Hammerton v London Underground Ltd (2003) JPL 984

*that where it would be **unlawful in accordance with public law principles, notably irrationality or abuse of power**, for a local planning authority to take enforcement action to prevent development proceeding, the development, albeit in breach of planning control is nevertheless effective to commence development. Enforcement action may still be taken to remedy the breach by requiring compliance with the condition. But the development cannot be stopped from proceeding..... I see no reason why the development which cannot be enforced against should not be regarded as effective to commence development...* (my emphasis added),

As such, where enforcement action is no longer possible, either because the time limit for taking enforcement action has expired or because it would be irrational and therefore unlawful to take enforcement action, the planning permission is to be viewed as having been lawfully implemented, despite the fact that the operations may have commenced in breach of a condition precedent. It is important to note that the date at which the court will look when deciding whether the LPA could or could not lawfully take enforcement action is the date on which the disputed works were commenced, in this case 13 March 2020.

In this case, whilst the development commenced in breach of planning control, it is clear from the evidence submitted and the Council's own records of applications and emails saved to file that negotiations took place over the course of years to finally gain approval for all pre-commencement conditions, these were condition 5 (Drainage), 6 (Drainage maintenance), 7 (Temp drainage), 10 (retaining walls), 13 (Access), 15 (Method statement birds/badgers). Therefore in light of these ongoing negotiations it is clear the local planning authority were satisfied that the conditions could be discharged despite the development commencing and as such did not take enforcement action in light of the pending approval of details reserved by conditions precedent, albeit some years later.

Recommendation: Approve

Authorisation - Delegated Powers Application

Number: 2024/91191

Officer Recommendation: Approve

Plans and specifications schedule:

Plan Type	Reference	Version	Date Received
Decision Notices	-	-	26/04/2024
Photo montage	-	-	26/04/2024

