

**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.: 2025/CL/90513/E

Site: Gomersal Hall, Oxford Road, Gomersal,
Cleckheaton, BD19 4AT

Description: Certificate of lawfulness to confirm valid commencement of erection of one dwelling approved under 2020/90350 for demolition of existing buildings and erection of 7 dwellings and associated garages (within a Conservation Area) within the 3 year time limit given in condition 1

Case Officer: Jessica Irwin

Decision Reference: PROPOSED 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 07-May-2025

2024/93490

Site Description

The application site relates to a large piece of open land, which accommodated one dwelling, Gomersal Hall. The dwelling was of a grand appearance within large grounds. The application site is bounded by mature trees to all sides and the site is also characterised by high boundary walls on the sides facing the highways of Oxford Road and West Lane.

The Applicant's Case

The application seeks to establish whether planning permission, reference 2020/90350 is still extant and lawful.

The proposal is for a Certificate of Lawfulness to confirm valid commencement of development approved under 2020/90350 for "demolition of existing buildings and erection of 7 dwellings and associated garages (within a Conservation Area)" within the 3 year time limit given in condition 1.

The application was granted conditional full planning permission on 12th November 2020 (and was due to lapse on 12th of November 2023). According to information supplied by the agent, work was commenced on or before 9th of November 2023.

Conditions 3, 7, 10, 11 and 16 of 2020/90350 required additional information to be provided to the Local Planning Authority (LPA) before the commencement of any development. Condition 14 required works to a boundary to be undertaken before development commences.

On the 5th of July 2023, the LPA received a discharge of condition application for the conditions, 3, 7, 10, 11 and 16 (ref: 2023/92017).

A split decision was issued on the 3rd of November 2023 to the following effect:

Condition 3 states that samples of the materials hereby approved shall be submitted to and approved in writing by the Local Planning Authority *prior to commencement of the superstructure of the dwellings*, this could not be discharged, further information is required to satisfy this condition. This does not impact the valid commencement of the development insofar as demolition of the existing building/s and the commencement of groundworks.

Condition 7 states that no development shall take place until an EDS addressing mitigation and enhancement has been submitted to and approved in writing by the local planning authority. The details provided were considered acceptable to satisfy the requirements of condition 7.

Condition 10 states that groundworks shall not commence until actual or potential land contamination at the site has been investigated and a

Preliminary Risk Assessment (Phase I Desk Study Report) has been submitted to and approved in writing by the Local Planning Authority. The information provided was acceptable for the purpose of condition 10.

Condition 11 states where further intrusive investigation is recommended in the Preliminary Risk Assessment approved pursuant to condition 10, groundworks (other than those required for a site investigation report) shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority. The details provided were considered acceptable for the purpose of satisfying condition 11.

Condition 16 states that prior to construction commencing, a schedule of the means of access to the site for construction traffic shall be submitted to and approved in writing by the LPA. The details provided were considered acceptable for the purpose of condition 16.

Pre-commencement condition 14 also states that *“Before development commences, the wall to the Oxford Road frontage shall be lowered to a height of 0.9m above the level of the adjacent Oxford Road carriageway as shown on approved plan number 0025 revision P1 and the sight lines of 2.4 x 37m shall be cleared of all obstructions to visibility exceeding 0.9m in height and these shall be retained free of any such obstruction.”* In discussion with Kirklees Council officers on the 31st of January 2025, it was confirmed with the agent acting on behalf of the applicant that Condition 14 excludes demolition of the existing building/s from the intentions of the ‘pre-commencement’ trigger.

Relevant Planning History

2020/90350 – Demolition of existing buildings and erection of 7 dwellings and associated garages (within a Conservation Area) – Full conditional permission

2021/94499 – Demolition of existing dwelling and erection of one detached dwelling and detached building to create dwelling forming annex accommodation associated with this new dwelling, erection of extensions and alterations to gate house to form one dwelling, erection of detached garage with first floor office and erection of outdoor store/garden room (within a Conservation Area) – Withdrawn

2023/92017 – Discharge conditions 3 (materials), 7 (EDS), 10 (Phase I Desk Study Report), 11 (Phase II Intrusive Site Investigation Report), 16 (construction traffic) on previous permission 2020/90350 for demolition of existing buildings and erection of 7 dwellings and associated garages (within a Conservation Area) – Split decision

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

The application is supported by a Section 81 notice, Asbestos Survey & Asbestos Certification (dated 10th November 2023) alongside invoices from Hutchinson Demolition & Dismantling Ltd dated 6th and 13th November 2023 confirming the demolition dates.

Assessment:

The Local Planning Authority (LPA) do not dispute the granting of planning permission for the development, or the date upon which it was granted.

For the permission to have been lawfully commenced, material operations pursuant to the implementation of the permission would need to have commenced on or before 12th November 2023 not in breach of pre-development conditions. In this instance, the material operations pursuant to the implementation would be the demolition of the existing buildings.

The applicant has provided the following evidence of commencement:

Section 81 notice dated 17 November 2023 - The Notice indicates the notification for demolition was received 17 November 2023. Condition 2 attached to the notification required the applicant to further notify the Council of the demolition commencement date. No evidence has been provided to demonstrate this notification was given. In any event, the demolition notice post-dates the expiry of the planning permission and thus cannot be afforded any weight in this decision.

Refurbishment & Demolition Asbestos Survey Report dated 20 October 2023 – This report provides no evidence of demolition of the building other than perhaps an intention to demolish on the 20 October 2023. Photographs embedded within the report dated 19 October 2023 clearly show the building to be intact externally and internally with no obvious work to demolish. No weight can be given to this evidence to demonstrably show demolition works or any other implementation of the planning permission other than no work had commenced on the 19 October 2023.

Certification of Re-Occupation ref: RC-20231110080137 – This report sets out that the description of works are for the “*removal of asbestos insulating board panels to ceiling and associated debris under fully controlled conditions*”. The location of this work is described to be within the “*garage &*

boiler room” which is estimated to take 1 hour to complete. The certificate is dated 10 November 2023 and sets out the removal of asbestos materials was completed on the same day. Photographs embedded in the certificate taken throughout the course of the works being undertaken indicate the internal areas worked upon remained intact. No evidence is contained in this certificate to demonstrate any demolition works had commenced. No weight can be given to this evidence other than it appears internal area within the building were clearly intact on the 10 November 2023.

Invoices from Hutchinson Demolition & Dismantling Ltd dated 6th and 13th November 2023 – Both invoices indicate payment terms for the removal of the “*garage and small room*” and “*Demolition and substructure removal at the above site*” respectively. Some weight may be afforded to the invoices in so far as the evidence indicates a contract had been agreed with the contractor to demolish the garage and buildings at the site although it does not provide any evidence of dates when such work was or was to be carried out.

The Council hold the following evidence:

Planning permission reference 2020/90350 for the Demolition of existing dwelling and erection of 7 dwellings. -dated 12 November 2020

Discharge of condition application 2023/92017 – dated 03 November 2023.

E-mail from Martin Walsh Architectural to Elenya Jackson (Planning Officer) on 10th of November 2023 2.55pm – The e-mail provides photographs pre-demolition dated 8th of November 2023 and mid-demolition dated 10th of November 2023. These photographs were attached to the e-mail received on 10th of November 2023. This indicates that demolition of the principal dwellinghouse began on the 10th of November 2023, prior to the expiry date of the planning permission on the 12th of November 2023.

Enforcement Investigation COMP/23/0002 – Closed with no evidence of breach 7 June 2023

Aerial Imagery dated 2021

Google Earth Imagery 3 September 2023

Analysis of Evidence

There is no doubt that planning permission was capable of being implemented up until within three years starting with the date the permission was issued on the 12 November 2020. It is also accepted that all conditions requiring further details to be agreed by the LPA had been submitted and discharged within the relevant three-year period. Consequently, the lawfulness of any works carried out turn on whether any works pursuant to the planning permission were, on the balance or probability, begun within the three year period, i.e. before the 12 November 2023.

Approved plans attached to the planning permission indicated that the principal dwellinghouse and all ancillary outbuildings were to be removed including detached store, greenhouses and other structures. The planning permission description does not specify the extent of demolition other than to states demolition of existing dwelling. It is accepted, however that the outbuildings may be regarded as normal adjuncts to the dwellinghouse and as such demolition of those structures can reasonably be said to be encapsulated into the scope of the planning permission. The lodge adjacent to the entrance gates is not included in the planning permission. This lodge was the subject of the enforcement investigation and thus provides no evidence to assist the applicant with regard to the works within the scope of the planning permission.

With regard to the evidence provided by the applicant, it has been demonstrated via the Refurbishment & Demolition Asbestos Survey Report that no work had been carried out on the 19 October 2023. Moreover, judging from the dated photographs embedded in the Asbestos Certificate, the internal garage and boiler room and outbuildings appeared intact on the 10 November 2023. It is noted, however that the Certificate also states this works was completed by 9:35 on the 10 November 2023. Google Earth imagery dated 3 September 2023 supports the evidence presented in the asbestos reports. Therefore, there appears to be little doubt that no demolition work to the dwellinghouse or its outbuildings had been undertaken on or before 19 October 2023 or within the garage and boiler room before 9:35am on the 10 November 2023.

The Section 81 notice provided by the applicant provides no evidence of commencement prior to the 13 November 2023 and in fact is post dated on the 17 November 2023 suggesting that no demolition had taken place prior to the 17 November 2023.

The demolition contractor invoice dated 6 November 2023 indicates payment terms for the removal of "AIB ceiling removal, garage and small room." It is likely the AIB refers to Asbestos Insulation Board removal as set out in the Asbestos survey. It is considered that the removal of ceiling boards in a couple of rooms within the dwellinghouse would not amount to the commencement of demolition. This invoice provides no weight to demonstrate demolition works had commenced on the 6 November 2023.

The demolition contractor invoice dated 13 November 2023 indicates the payment terms for the demolition of Gomersal Hall. It does not demonstrate the works were carried out prior to the invoice date, notwithstanding the date of the invoice post-dates the expiry of the planning permission. The Section 81 notice also provides evidence to the contrary thus negating weight that maybe assigned to the invoice to the degree the invoice does not in itself demonstrate beyond the balance of probability that the works were undertaken prior to the 12 November 2023.

However, the Council holds an e-mail sent by Martin Walsh Architectural to Elenya Jackson on the 10th of November 2023 at 2:55pm referenced in the applicants covering letter, which includes attached photographs clearly depicting the partial demolition of the principal dwellinghouse. The embedded properties on the photographs indicate these works were carried out on the 10 November 2023. Whilst the Certificate indicates that the works to demolish had not commenced prior to 9:35am on the 10 November 2023, it is feasible and possible that the developers were keen to implement the permission before the 12 November 2023 and that both asbestos removal and demolition contractors were lined up to undertake the work immediately after the asbestos was mitigated. The photographs indicate approximately half the dwellinghouse had been removed which is considered possible within the 5.5 hours before the email was sent containing the photographs.

Therefore, on the balance of probabilities, it has been shown that works consisting of the demolition of a building on the 10th of November 2023, as approved through planning permission 2020/90350 were lawful for the purposes of section 191 of the Town and Country Planning Act 1990.

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)

Conclusion

The evidence provided by the applicant demonstrates that on the balance of probability, works consisting of the demolition of the former dwellinghouse on the 10th of November 2023, as approved through planning permission 2020/90350 were lawful for the purposes of section 191 of the Town and Country Planning Act 1990 and to continue with the erection of a dwellinghouse in accordance with planning permission 2020/90350 would be lawful development.

Plan type	Reference	ID	Date received
Application form	-	1078596	25/02/2025
Location plan	-	1078594	25/02/2025

Reoccupation certificate	P-42864 - RC-20231110080137	1078593	25/02/2025
Refurbishment and Demolition Asbestos Survey	S17535	1078591	25/02/2025
Section 81	-	1078590	25/02/2025
Supporting letter	-	1078589	25/02/2025
Invoice 4865	-	-	25/02/2025
Invoice 4870	-	-	25/02/2025
Photographs 10 November 2023	-	-	Held by the Council