



Appeal Decision

by **A L McCooey BA MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Decision date: 17/10/2023

Appeal reference: CAS-02459-Z5M3M2

Site address: 26 Upper Floors, High Street, Brecon

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 199) against a refusal to grant a certificate of lawfulness of a proposed use or development (LDC).
 - The appeal is made by Mr Richard Smith against the decision of Bannau Brycheiniog National Park Authority.
 - The application Ref 22/1280/CPE, dated 25 July 2022, was refused by notice dated 25 October 2022.
 - The application was made under section 191(1) (c) of the Town and Country Planning Act 1990 as amended [the Act].
 - The development for which a certificate of lawful use or development is sought is: Application to confirm that works sufficient to constitute implementation of the original planning permission had been undertaken within the 5 year timescale given. The LDC application relates to original planning approvals 13/10034/FUL and subsequently 17/15236/CON. The approved applications are to convert the upper storeys to residential use as flats. Condition 1 of planning application 13/10034/FUL states that 'The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission (22/4/2015)' Therefore development had to begin by 22/4/2020.
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Decision

1. The appeal is allowed.

Procedural Matters

2. I have taken the description of the use or operations for which the Lawful Development Certificate (LDC) is sought from a combination of the application form and the appeal form, as this fully describes the application. As this is similar to the description in the decision notice, I am satisfied that there is no prejudice in this respect.
3. The application as made is that the development has lawfully commenced but has not been completed. In these circumstances an application for a proposed use or development under section 192 would be appropriate. This was the position of the Local Planning Authority, who nonetheless accepted and determined the application as submitted. I shall treat the application as made under section 192.

Main Issue

4. The main issue is whether the Local Planning Authority's decision not to issue an LDC was well-founded.

Reasons

5. Full planning permission 13/10034/FUL for the "conversion of the upper floors of the building to 4 flats" was granted on 22 April 2015 subject to 3 conditions. Condition 1 provides that the development must commence within 5 years i.e. by 22 April 2020. An application (Ref. 17/15236/CON) under section 73 of the Act for a planning permission without condition 3 of the original permission was approved on 16 October 2017. Condition 3 related to the provision of an affordable housing unit within the scheme. The only other extant condition requires compliance with the approved plans. The plans remain the same under either planning permission.
6. The LDC seeks confirmation that the development approved under the above application has lawfully commenced. The appellant's justification for this is that material start to the approved development was undertaken in March and early April 2020, by internal works of demolition and the erection of partition walls. The existing and approved plans have been annotated to show the works that have taken place in accordance with the approved plans. The Local Planning Authority undertook a site visit in July 2020 and observed the works that had taken place. No issue is taken with the extent or dates of the works as indicated by the appellant or that there was any deviation from the approved plans.
7. Section 56 of the Act states that development has begun when any material operation comprised in the development begins to be carried out. Material operation also includes a change of use of the land {subsection (4)}. Section 55 (2) provides that internal works are not development and do not require planning permission. However, planning control does extend to internal alterations where the works are incidental to the making of a change of use which does require planning permission. Caselaw in *Murfitt v SSE [1980]* JPL 598 and *Somak v SSE and London Borough of Brent (1987)* JPL 630 (referred to by the parties) has established that an enforcement notice in respect of the change in use may lawfully require incidental operational works to be undone, even if they did not themselves require planning permission or even amount to development at all.
8. The appellant has referred to a 2021 appeal decision (APP/L5810/X/20/3251376) in England in respect of an application for an LDC. I have had regard to this decision as it raises similar issues to the current appeal. It is noteworthy that the Local Planning Authority did not submit any appeal statement (relying on the Officer report only) and so has not made on any comment on this appeal decision.
9. The evidence is that the works were carried out before the relevant planning permission had lapsed and there is nothing to suggest that they were not undertaken in accordance with the approved plans. The Local Planning Authority argues that the internal works are not sufficient to demonstrate that the development has begun because they in themselves would not have required planning permission by virtue of section 55 (2).
10. I note from the examples quoted by the parties that relatively minor works are sufficient to begin development under Section 56. Nowhere in this section of the Act does it state that that a material operation must require planning permission in its own right. The 2021 appeal decision also refers to caselaw that establishes that Section 56 does not exclude the possibility that development may be begun in other circumstances than those expressly set out in Section 56 itself (*Field v FSS & Crawley BC [2004]* EWHC 147).

11. In this context, I consider that these works constitute a material operation as specified in Section 56 of the Act because they were necessary in order to create the 4 flats as approved. The planning permission was subject to a condition requiring that it be carried out in strict accordance with the approved plans. The plans include proposed floor plans showing the internal alterations. The layout of the proposed flats was a material planning consideration as indicated by the reason for the imposition of the plans condition being to ensure a satisfactory form of development. The material operation commenced within the 5 year period and so the development was begun within time. The evidence is that the works were carried out in accordance with the approved plans.
12. The Local Planning Authority refers to an English appeal decision in respect of Community Infrastructure Levy (CIL) payment because development had commenced. No details of this decision other than the date (2017) are provided. This decision states that regard may be had to any building works which facilitate the change of use. That case is then decided on the evidence submitted. There is no detail to compare the level of works undertaken with this case or even whether planning permission had been necessary for the change of use. The CIL regime is concerned with different matters than planning permission. I do not consider that this case is comparable to the appeal situation. The Authority's reference to s.56(5) is not relevant as planning permission was not granted by a general development order. The fact that there was no application for approval under the Building Regulations is not relevant to the issue under consideration of commencement of planning permission.
13. The appellant argues that as condition 1 was attached to permission 17/15236/CON then the appellant would have had until 16 October 2022 to commence development. This is incorrect because Section 73(5) of the Act provides that planning permission must not be granted under this section to change a condition by extending the time within which a development must be started. The reference to the date of the planning permission as 22 April 2015 in brackets on the decision notice is therefore correct.

Conclusion

14. For the reasons given above, I find that the development subject of planning permission Ref: 13/10034/FUL did lawfully commence within the prescribed timescales set out in condition 1 of that consent. Having taken all the relevant information into account, I conclude that the planning permission is therefore extant, meaning that the site can be lawfully developed under the terms of the above permission or the subsequent planning permission Ref. 17/15236/CON. For this reason, and having considered all matters raised, I conclude that the Council's decision not to issue an LDC was not well-founded. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

A L McCooey

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(WALES) ORDER 2012: ARTICLE 28

IT IS HEREBY CERTIFIED that on 25 March 2021 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the approved site location plan for planning permission Ref. 13/10034/FUL, are lawful within the meaning of section 192 (2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building works carried out are material operations which accord with the relevant planning permissions and were carried out before the relevant planning permission was due to lapse.

Signed:

A L McCooey

INSPECTOR

Date: 17 February 2023

Reference: CAS-02459-Z5M3M2

First Schedule: Application to confirm that works sufficient to constitute implementation of the planning permission had been undertaken within the 5 year timescale given.

The LDC application relates to original planning approvals 13/10034/FUL and subsequently 17/15236/CON. The approved applications are to convert the upper storeys to residential use as flats. Condition 1 of planning permissions 13/10034/FUL and 17/15236/CON states that 'The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission (22/4/2015)' Therefore development had to begin by 22/4/2020. The application is to confirm whether the development complied with condition 1.

Second Schedule: 26 Upper Floors, High Street, Brecon

NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/ operations described in the First Schedule taking place on the land specified in the Second Schedule was/ were lawful, on the certified date and, thus, was/ were not liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use/ operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/ operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the Local Planning Authority.