

DELEGATED DECISION REPORT

SMD/2021/0196
Valid 23/03/2021

GROVE FARM
LEEK ROAD
MOORVILLE
CELLARHEAD

**CERTIFICATE OF
LAWFULNESS FOR
PROPOSED CONTINUATION
OF BUILDING WORKS TO
CONSTRUCT
DWELLINGHOUSE AS
APPROVED UNDER
APPLICATION SM96-0333**

**(CERTIFICATE OF
LAWFULNESS - PROPOSED)**

MAIN ISSUES

Whether a lawful start was made to planning approval SM96/0333.

DESCRIPTION OF SITE

The site comprises a parcel of land located on the eastern side of Leek Road. The site includes a detached brick and tile barn and the footings and a small amount of brickwork to the walls of a dwellinghouse that was granted planning permission in 1996. The site is surrounded by open fields with intermittent farms and dwellings located further afield.

The site is relatively isolated from any other development (the edge of Cellarhead is about 600 metres away) and it is about 2 km away from the centre of Werrington. The site lies in the Open Countryside and the North Staffordshire Green Belt.

PROPOSAL

The applicant has applied for a Proposed Lawful Development Certificate to confirm that a lawful start was made to planning approval SM96/0333 and therefore work can continue in order to complete the proposed dwellinghouse as approved.

APPLICANT'S SUBMISSION

A Planning Statement produced by Rob Duncan Planning Consultancy was submitted together with an Affidavit from the applicant, a photograph of the foundations in-situ and a copy of the Building Control records for the site. The Planning Statement, in summary states:

- Planning application SM96-0333 was approved on 24th June 1996 and granted consent for the erection of a replacement dwelling on the site.

- The permission was granted subject to five planning conditions, of which Condition 3 stipulated the following: '*No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of the development*'.
- The Statutory Declaration of Mr. M. Shirley accompanying the application confirms that works to implement the planning permission were undertaken in February 2001, which is within the five year implementation period dictated by Condition 1. The works undertaken included clearance of the site (it being occupied by a number of buildings), digging trenches for the foundations, laying of foundation concrete, and construction of the building up to approximately damp proof course level, along with the laying of drainage.
- Photographic evidence of the works undertaken on site are enclosed with the Statutory Declaration of Mr. M. Shirley, and those works remain on site to the present day and can be readily observed.
- The Statutory Declaration furthermore confirms that prior to constructing the dwellinghouse fees were paid to SMDC Building Control and the site was visited by Steve Mansfield (SMDC Building Control Officer). The Building Control records enclosed as Appendix B provide independent corroboration of those facts.
- Having regard to the facts set out within the Statutory Declaration of Mr. M. Shirley, it is beyond doubt that works to implement the planning permission SM96-0333, in the context of s56(4) of the Town and Country Planning Act 1990 (As Amended), were undertaken, and that they were carried out before the planning permission expired (Condition 1 of SM96-0333)
- That the breach of condition 3 of SM06-0333 did not serve to imperil the planning consent, and that a lawful commencement of development did occur.
- Draws attention to the judgment in *R (Hart Aggregates Ltd) v Hartlepool Borough Council [2005]* which confirmed that a distinction must be drawn between conditions that require something to be done before development starts, and conditions which go to the heart of the permission. Only when both tests are satisfied is the condition considered to constitute a true conditions precedent to which the *Whitley* principle applies. Whether the breached condition amounts to a true conditions precedent that goes to the heart of the permission is a matter of judgment for the decision maker.
- The judgement in *Hart* has been subsequently endorsed in the Judgments of *Bedford Borough Council v The Secretary of State for Communities and Local Government and Aleksander Stanislaw Murzyn [2008]* and *Greyfort Properties Ltd v Secretary of State for Communities and Local Government [2011]*.
- The *Murzyn* judgment is of particular relevance to the submitted proposal, as the case hinged on a breach of a pre-commencement condition relating to a landscaping scheme and boundary treatments. The judgment found that they were peripheral matters that were unlikely to affect the form and substance of the development, which in that case constituted a barn conversion.

- In this particular case, condition 3 required the submission and approval of a landscaping scheme, including details of existing trees and hedgerows on the land to be retained, together with measures for their protection. It is clear from a review of the approved plans for application SM96-0333 that the location where the replacement dwelling was approved was otherwise occupied by buildings and was not in close proximity to any trees or hedgerows.
- As a consequence, the requirements of Condition 3 are not considered to be central to the development, as was found to be the case in the *Murzyn* judgment discussed above, and rather they are peripheral matters that do not go to the heart of the permission. By resultant effect, planning permission SM96-0333 was lawfully implemented, and that the consent remains alive to this present day. The applicant would therefore be free to complete the proposed development in accordance with the approved plans.

OFFICER COMMENTS

There is evidence that, historically, there was a traditional farmhouse on the site of modest proportions. A previous outline application for a replacement dwelling was approved in 1988 (Ref SM88/0702) and then renewed in 1991 but a subsequent reserved matters application for approval of details was refused in 1994 and dismissed on appeal. In 1996, a revised application (Ref SM96/0333) for a 3-bedroom dwelling with a T-shaped floor plan was approved.

In 2015, planning permission was first withdrawn under application SMD/2015/0409 for a replacement dwelling and then refused under application SMD/2015/0748 for a detached dwelling and garage. The 0409 application was withdrawn as it was considered that there was no house to replace and therefore the description of development was incorrect, whilst the 0748 application was refused as the development of a new house in the Green Belt comprised inappropriate development and would result in a visual impact on the landscape.

The Officer's report to the 0409 application stated:

'The application for the current proposal includes submissions that the footings and partial walls indicate that there is still an extant permission in place that could be completed, but that case has not been proven.'

The Officer's report to the 0748 application stated:

'In a supporting planning statement the applicant states that the differences on this occasion to the previous application are "outside the submitted drawing" i.e. that the foundations of a house to replace the original house that stood on the site have been started, that they were checked by the Council's Building Control Service, and that the access has been formed. In practice, there have been no material changes in planning circumstances because the applicant has neither sought to demonstrate, nor now attempted to demonstrate, that a lawful start has been made. Even if the foundations had been checked by the Building Inspector, the fact the a pre-commencement

condition was never complied with (and no details ever submitted) negates that argument.'

The applicant has therefore submitted a Certificate to prove that a lawful start had been made on the 1996 planning approval for a dwellinghouse to replace the existing farmhouse.

Planning application SM96/0333 was approved on 24 June 1996 and required the development to be commenced within five years from the date of the decision notice, giving the applicant until 24 June 2001.

The applicant has submitted evidence from the Council's Building Control department that work was commenced on 22 February 2001 in which the foundation excavations were inspected. On 28 February 2001, a further inspection took place in respect of the concrete foundations. A site inspection on 29 February 2001 took place to excavate some of the concrete foundations and a further site inspection took place on 3 April 2001 regarding further concrete foundations. On 30 May 2001, an inspection took place in respect of the drains. This has all been corroborated by the Building Inspector who visited the site and also by the Building Control department who provided the reference number, SBN/2001/0561 (Old reference 01/00052/DOMBN).

It is clear from photographic evidence provided with the Certificate, photographs contained on the application files for the 2015 applications and from observing aerial photographs that the site contains foundations and the beginnings of the walls to the dwellinghouse approved in 1996. It is therefore agreed that the dwellinghouse as approved in 1996 was commenced on site within five years of the date on the Decision Notice and remains in-situ today.

Planning approval SM96/0333 included a pre-commencement condition for a landscaping scheme to be submitted to and agreed with the Local Planning Authority. Condition 3 of the Decision Notice stated:

'No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of the development.'

No information was submitted to the Local Planning Authority to discharge Condition 3, which is agreed by the applicant. As stated in the submitted Planning Statement, Case Law has established a distinction between conditions that require something to be done before development starts, and conditions which go to the heart of the permission. Only when both tests are satisfied is the condition considered to constitute a true conditions precedent.

Condition 3 related to the submission and approval of a landscaping scheme and the protection of any trees and hedgerows to be retained. As outlined within the Planning Statement, the approved dwellinghouse was to be sited on the footprint of existing buildings to be demolished and therefore its construction would not have required

the removal of any existing trees or hedgerows or their protection. There are no TPO protected trees on the site, nor is the site located in a Conservation Area.

Today's planning policy requires pre-commencement conditions to only be used in limited circumstances in order to not delay the commencement of development. Therefore, if a landscaping condition is proposed today, it would not comprise a pre-commencement condition as the required details are not needed before work can commence on site.

It is therefore agreed that that Condition 3 of planning approval SM96/0333 did not go to the heart of the permission and therefore, even though permission was commenced prior to discharging this condition, a lawful start was made on the approval.

CONCLUSION / PLANNING BALANCE

It can be confirmed that the replacement dwellinghouse approved under application SM96/0333 was commenced within five years of the date on the Decision Notice.

Condition 3 was not discharged prior to the commencement of development.

Condition 3 required the submission and approval of a landscaping scheme. This is not considered to go to the heart of the permission and therefore even though the development was commenced without discharging Condition 3, it can be confirmed that a lawful start was made on the application.

Planning approval SM96/0333 is therefore extant and work can continue to finish the dwellinghouse.

A positive certificate should therefore be issued.

OFFICER RECOMMENDATION: Issue a POSITIVE Certificate

Case Officer: Ailsa Berry

Recommendation Date: 18/05/2021

X 

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council

