



Delegated Report

Lawful Development Certificate (Existing)

Planning Application No: 20240845

Location: Parsonage Farm The Street Cobham Gravesend

Description: Application for an Existing Lawful Development Certificate for implementation of planning permission 20230584 (as amended by 20240233) by digging a trench at the site.

Applicant: Mr Richard Scripps

Site Visit Date: N/A Desktop Assessment

This application is made under section 191 of the Town and Country Planning Act (1990) (as amended) for a Certificate of Lawfulness to confirm the implementation of planning permission reference 20240233.

Submitted Documents/Plans

Application Form
Location Plan
010 – Existing Plans, Elevations and Sections
1038972/P 101 A – Proposed Roof and Site Plan
1038972/P110 A – Proposed Plans and Elevations
Cover Letter and Appendices

Relevant Planning History

Reference	Description	Decision	Decision Date
20240233	Application for a non-material amendment to planning permission reference number 20230584 to allow amendment to Condition 2 Approved Drawings List and Condition 6 Pre-commencement Condition.	Permitted	09.04.24
20230584	Conversion of barn to provide 2 dwellings consisting of a three bed dwelling and a one bed dwelling.	Permitted	26.07.23

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Legislation

The Town and Country Planning Act (1990) (as amended) Section 191: Certificate of Lawfulness of existing use or development.

Procedure for determination

This Lawful Development Certificate seeks confirmation from the Local Planning Authority that planning permission reference 20240233 has been lawfully implemented. The implementation of the development would involve the scheme meeting the definition of development, as set out in section 55(1) of the Town and Country Planning Act 1990 (as amended) being *“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”*. The commencement of any development on the site would, in this instance, have been before the full discharge of pre-commencement conditions attached to the original permission.

Nonetheless, to confirm the lawful status of the development, the Local Planning Authority need to be satisfied that all pre-commencement conditions have been discharged, and the development has been implemented before the expiration of three years.

Planning Appraisal

This application is for a Lawful Development Certificate and not for a planning permission. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests with the applicant and the evidence submitted must be sufficiently precise and unambiguous to enable the Local Planning Authority to understand exactly what is involved. The decision must be made on the balance of probability. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009).

The nature of this Lawful Development Certificate, seeking confirmation of implementation, means that Section 56 of the Town and Country Planning Act 1990 is relevant. Section 56 states that subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—

(a) if the development consists of the carrying out of operations, at the time when those operations are begun;

(b) if the development consists of a change in use, at the time when the new use is instituted;

(c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

The provisions of this section go on to state that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Subsection 4 of Section 56 of the Town and Country Planning Act 1990 considers a material operation to mean any of the following:

(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.

The applicant is thus making the argument that the works carried out at the site to date have lawfully

implemented the approved development.

Applicants Evidence

The applicant has provided the following documents as evidence that works commenced on site prior to the three year expiration date of the approval being 01 August 2026:

Application Form

Location Plan

010 – Existing Plans, Elevations and Sections

1038972/P 101 A – Proposed Roof and Site Plan

1038972/P110 A – Proposed Plans and Elevations

Cover Letter and Appendices comprising:

- o Appendix 1: Decision Notice (reference: 20230584)
- o Appendix 2: Decision Notice (reference: 20240233)
- o Appendix 3: Location of Proposed Trench (P 101 A Revision A)
- o Appendix 4: Photographs of works

The evidence provided demonstrates that trenches were excavated on site with works completed 2nd September 2024. The appendices provide photographic evidence of the trench, which corresponds with the approved plans under the Non-Material Amendment ref 20240233.

In terms of Section 56 of the TCPA 1990, the digging of the trench meets b) as it is for the foundations, and would be classed as a material operation. Therefore, the trenches are considered to constitute operational development in line with Section 56 and is connected to the heart of the permission.

Council Evidence and Assessment

The original application and Non-Material Amendment require the development to have begun not later than 1st August 2024. This permission included 1 pre-commencement condition. The wording of this condition originally read as follows under planning ref 20230584:

‘Before the commencement of development, a scheme for the whole site to provide for the disposal of surface water run-off and incorporating sustainable urban drainage systems (SUDS), shall be submitted to and approved in writing by the Local Planning Authority. The drainage works shall be implemented in accordance with the details approved pursuant to this condition and shall be completed prior to occupation of the development or in accordance with a timetable to be agreed in writing by the Local Planning Authority. The scheme submitted pursuant to this condition shall include the following, as appropriate:

a) A scaled plan indicating the extent, position and type of all proposed hard surfacing (e.g. drives, parking areas, paths, patios) and roofed areas.

b) Details of the method of disposal for all areas including means of treatment or interception for potentially polluted run-off.

c) Scaled drawings including cross section, to illustrate the construction method and materials to be used for the hard surfacing (sample materials and literature demonstrating permeability may be required).

Reason: In order to ensure adequate arrangements for the disposal of surface water and in accordance with Policy CS18 of the Gravesham Local Plan Core Strategy September 2014).’

Non-Material Amendment application ref change the wording of this pre-commencement condition as follow:

‘Before the commencement of development, other than limited engineering operations shown on Plan

1038972/P 101A A relating only to the indicated trench, a scheme for the whole site to provide for the disposal of surface water run-off and incorporating sustainable urban drainage systems (SUDS), shall be submitted to and approved in writing by the Local Planning Authority. The drainage works shall be implemented in accordance with the details approved pursuant to this condition and shall be completed prior to occupation of the development or in accordance with a timetable to be agreed in writing by the Local Planning Authority. The scheme submitted pursuant to this condition shall include the following, as appropriate:

- a) A scaled plan indicating the extent, position and type of all proposed hard surfacing (e.g. drives, parking areas, paths, patios) and roofed areas.
- b) Details of the method of disposal for all areas including means of treatment or interception for potentially polluted run-off.
- c) Scaled drawings including cross section, to illustrate the construction method and materials to be used for the hard surfacing (sample materials and literature demonstrating permeability may be required).

Reason: In order to ensure adequate arrangements for the disposal of surface water and in accordance with Policy CS18 of the Gravesham Local Plan Core Strategy September 2014).

Whilst, the amendment of this condition does allow for the implementation of the trench as provided, it does still require that details as submitted and approved before commencement of the development, excepting this trench. In this case, the pre-commencement condition has not been discharged.

One such similar case presence in 2001, under appeal reference APP/M6825/X/00/1050150 (Appendix A), where the inspector refused to grant an LDC relating to a proposed dwelling, despite agreeing that the digging of a trench has constituted a material planning operation sufficient to preserve a planning permission. The failure to discharge a pre-commencement condition requiring the prior approval of a landscaping scheme, resulted in the inspector dismissing the appeal.

The details to approve this condition have not been submitted or approved. Therefore, development cannot be considered to have commenced until the pre-commencement condition has been discharged.

Conclusion

The applicant's information which has been submitted is sufficient and as the permission has not yet expired, it is clear that the trench has been constructed before the permission has expired.

On the balance of the information available the development would be considered to have been implemented in accordance with section 56 of the Town and Country Planning Act 1990.

Recommendation

Refuse Lawful Development Certificate

(For detailed reasons for refusal and informatives, see draft Decision)

Case Officer:	Mrs Lisa Fisher	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	8th November 2024	Dated:	11th November 2024