

DELEGATED DECISION REPORT

HPK/2024/0083
Valid 06/03/2024

HEARTSEASE LANESIDE
ROAD
NEW MILLS

APPLICATION FOR
PROPOSED LAWFUL
DEVELOPMENT CERTIFICATE
IN RELATION TO CONDITIONS
1 AND 5 RELATING TO THE
APPROVED APPLICATION
HPK/2011/0313 FOR A
PROPOSED NEW DWELLING -
PLANNING PERMISSION IS
VALID

(CERTIFICATE OF
LAWFULNESS - PROPOSED)

MAIN ISSUES

- Whether the appropriate legal tests have been met under section 192 to recommend a grant of a lawful development certificate.

DESCRIPTION OF SITE

The site is located within the built up area of New Mills but is on the fringe of open countryside and the designated North West Derbyshire Green Belt. It consists of an existing detached dwelling, known as Heartsease and its garden area. Due to the topography of the area the site has substantial level differences between the frontage of Laneside Road and rear of the site, resulting in the appearance of a single storey dormer dwelling to the front with three storeys at the rear. The area around the boundary is covered by a Tree Preservation Order, (Derbyshire County Council TPO 146) which excludes the garden area. There is also a stream which runs to the rear of the site and swoops around along the boundary to the east.

The frontage of the site on Laneside Road has a stone boundary wall that continues along the neighbouring property with access point openings for vehicular access. To the east the site is a stream and mature trees, which leads to the adjoining agricultural field located within the countryside and Green Belt. The boundary of the field fronts Laneside Road by the continued dry stone wall from Heartsease which leads to an access gate to serve the field further along the highway.

PROPOSAL

A proposed lawful development certificate in relation to conditions 1 and 5 relating to the approved application HPK/2011/0313 for a proposed new dwelling planning permission is valid has been received by the Council.

The grounds for the application is submitted as follows:

"I applied for planning permission (ref HPK_2011_0313 – 110830) to build a new detached house in our side garden in June 2011 and full permission was granted in January 2012.

We were advised that before works could start we should clearly separate our garden from our house and reduce the height of the roadside drystone wall in order to achieve the visibility splay required as a condition precedent to the build.

Our wall was very high so we first of all reduced it as specified and used the stone to demarcate our side garden from the house with a new drystone wall then moved on to the adjacent section of much lower field-stone wall which the owners, our neighbours across the road, had previously given us verbal permission to do. Shortly after we finished, they changed their mind leaving us unable to comply with the condition precedent so our agent undertook an appeal.

Our appeal was dismissed so we were unable to build the house. I was informally advised that there was little else we could do at the time but perhaps try again in the future and at least the outline planning permission would stand in perpetuity because we had commenced demolition of our wall and the building of a new wall to demarcate the garden building plot from the house.

We did not try again, and the disappointment, stress and financial loss of this episode was a factor in my early retirement a couple of years later.

Nearly a decade on we have now decided to finally sell up and move so I would very much appreciate your confirmation that the 'outline planning permission in perpetuity' is in force for others after us to pursue what would be a wonderful house in an exceptional location.

Pursuant to the Planning Approval, the pertinent conditions for this application for a Lawful Development Certificate are conditions 1 and 5.

Condition 1; "The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is later." Condition 1 has been met as development started within the specified time period.

Condition 5; "Before any other operations are commenced a new vehicular and pedestrian access shall be created to Laneside Road in accordance with the application drawings, laid out, constructed and provided with 2.4m x 43m visibility splays in either direction, the area in advance of the sightlines being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level."

A material operation and beginning of development works has been met in accordance with s56(2) TCPA 1990. The grounds for this application are that Condition 1 has been

fulfilled (via commencement of the works associated with Condition 5). Therefore, the Outline Planning Approval is in perpetuity.

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The following supporting documentary evidence accompanies the application:

1. HPK/2011/0313 Decision Notice of Original Outline Planning Approval
2. Location Plan and Proposed Site Plan (showing works to boundary wall associated with Condition 5)
3. Site Plan and Wall Elevation (showing works to boundary wall associated with Condition 5)
4. Revised Site Plan associated with application HPK/2013/0082 to alter Condition 5 of the above outline planning approval
5. Refusal of the application to alter Condition 5
6. Appeal Decision Ref: APP/H1033/A/13/2199301 - dismissing the appeal to alter Condition 5
7. Photograph of the original boundary wall height
8. Photograph of the reduce height wall
9. Photograph of the section of the wall that was rebuilt by a neighbour following withdrawal of their permission to lower
10. 2 x photographs of the rear garden boundary wall built to separate Heartsease 132 Laneside Road from the proposed new dwelling

National Planning Policy Guidance

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

Full permission for the erection of a new house was granted under application reference HPK/2004/0319.

Outline planning permission was granted under application reference HPK/2011/0313 for a detached dwelling. Approved on 31st August 2011.

Approval of the reserved matters for the outline application under application reference HPK/2011/0665. Approved on 17th January 2012.

CONSULTATIONS

N/A

Public Comments

N/A

OFFICER COMMENTS

The statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Act below:

(1) If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(3) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use or operations to be lawful; and

(d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.]

The relevant consents are:

- Outline Planning Permission ref. HPK/2011/0313 dated 31st August 2011
- Reserved Matters Planning Permission ref. HPK/2011/0665 dated 16th January 2012

Following the above reserved matters approval, work must be begun with the following time window: 16th January 2012 to the 30th August 2014 only.

The material start of the relevant consents relies on modifications undertaken to the frontage stone boundary wall of the adjacent field to allow for the required 2.4m x 43m visibility splay as well as the separation of the plot for development from Heartsease.

Attention is drawn to ref. HPK/2013/0082 (appeal ref. APP/H1033/A/13/2199301 dismissed dated 31st October 2013) seeking planning permission for a detached

dwelling without complying with a condition attached to planning permission ref. HPK/2011/0313. The LPA Appeal Statement in relation to the above appeal and following paragraphs are herein relevant:

5.2: On the approved applications for outline and reserved matters it was apparent that the red line included the site boundary in relation to the modifications to the stone boundary wall of the adjacent field to allow for the 2.4m x 43m visibility splay. This involved the reduction in height of part of this stone boundary wall of which served an agricultural field. The field and wall are within the ownership of those identified on the original submission under Certificate B of applications HPK/2011/0313 and HPK/2011/0665. The correct notice was served on this landowner.

5.3: The works required as part of the application for the variation will involve modifications only to the frontage of the existing property known as 132 Laneside Road, which is in the ownership of the appellants and the neighbouring property known as 130 Laneside Road of which the correct notice has been served. The proposal shows the reduction in heights to 600mm for the site frontage and 1m reduction of the stone boundary wall for the neighbouring property which runs along the frontage of Laneside Road.

5.4: The Authority believes to the best of its knowledge there is a neighbour dispute and although works to the stone boundary wall were started these have since ceased and the wall has been rebuilt and any consent which was given by the owners of this land has now been withdrawn. This is also apparent from the nature of comments received from the neighbour consultation.

Of relevance, the applicant has drawn attention to the Town and Country Planning Act 1990, Part III, 'Meaning of development', Section 56 (2) as detailed below together with the other elements of s.56:

56 Time when development begun.

(1) 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).

(2) For the purposes of the provisions of this Part mentioned in subsection (3) 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.

(3) *The provisions referred to in subsection (2) are sections [F161L(5) and (7),] 85(2), 86(6), 87(4), [F289] 91, 92 [F3, 94 and 108(3E)(c)(i)].*

(4) In subsection (2) “material operation” means—

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

[F9(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.

In these circumstances, making a material start in relation to the relevant consents would be defined as: “(a) *any work of construction in the course of the erection of a building*” and therefore “the modifications to the stone boundary wall of the adjacent field to allow for the 2.4m x 43m visibility splay” would not fall within the scope of this definition. Neither would the separation of Heartsease from the consented site. Accordingly, such works would not amount to a material start of the above consents.

The red edge location plan submitted for the certificate incorrectly relates to consented schemes ref. HPK/2011/0313 and HPK/2011/0665 by encompassing the blue land.

Notwithstanding the above concerns, the photographic evidence does not demonstrate such the works were carried out between the relevant time period i.e. 16th January 2012 to the 30th August 2014.

The Planning Practice Guide states: “A *certificate application needs to describe precisely what is being applied for and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful*”.

CONCLUSION

Accordingly, and on this basis I am not satisfied that the appropriate legal tests have been met under section 192 to recommend a grant of a lawful development certificate.

OFFICER RECOMMENDATION : Not deemed lawful

Case Officer: Rachael Simpkin

Recommendation Date: 14th May 2024

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council