

Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6TH SEPTEMBER 2024

Appeal Ref: APP/A2525/X/23/3334998

Dave Cook Engineering, Quadring Road, Donington, SPALDING, PE11 4TB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Cook Property Holdings against the decision of South Holland District Council.
 - The application ref H04-0902-23, dated 9 October 2023, was refused by notice dated 29 November 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development sought is to confirm that planning permission H04-0894-17 for 7 homes has been materially commenced by a building operation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The parties were informed in advance that that the appeal would be determined without the need for a site visit.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant the lawful development certificate is well-founded. The application seeks an LDC for building works that took place on 16 November 2020, and which consisted of the digging of a trench which they say is part of the surface water drainage scheme approved as part of planning permission H04-0894-17.
4. The Council refused to grant the LDC because they did not consider the works to fall within the relevant definition within the legislation. There is no dispute regarding the extent of the work, or the date on which they were undertaken.

Reasons

5. Section 56 of the 1990 Act provides 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 (and this applies to section 91 which regulates the duration of a planning permission).

6. The definition of a material operation within the section includes various elements but only section 56(4)(b) and (c) need to be considered in this appeal. Section 56(4)(b) is the digging of a trench which is to contain the foundations, or part of the foundations of a building, and section 56(4)(c) is the laying of underground main or pipe to the foundations of a building or trench.
7. On the appellant's case, the trench was part of the surface water drainage scheme. It was not a trench which would have contained the foundations of a building, and it was not intended to contain an underground main or pipe to the foundations. The trench, as described by the appellant, did not therefore fall within the definition of material operation under section 56, notwithstanding that the digging of a trench, or indeed other operations involved in constructing a surface water drainage scheme, could fall within the wider definition of development pursuant to section 55 of the 1990 Act.
8. The definition of material operation in section 56(4) is a closed list. It does not include a "catch all" provision to allow for other similar works. The works described by the appellant are not a material operation as set out in that section, and as such the appeal cannot therefore succeed.

Conclusion

9. For the reasons given above I conclude that the Council's refusal to grant an LDC to confirm that planning permission H04-0894-17 for 7 homes has been materially commenced by a building operation was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Zoë Frank

INSPECTOR