

ROMSEY LODGE – BLINDBURN

APPLICATION FOR CERTIFICATES OF LAWFULNESS

INTRODUCTION

1. I am instructed by Judith MacKinnon to make two applications for Certificates of Lawful Use (“CLU”) at the above property. The first CLU is for the lawful implementation of permission 12/02072/FUL for “Erection of two holiday chalets and septic tank” at The Stable Blindburn Hall. The second CLU is for “Erection of a dwelling house on plot 1”.
2. There are two applications as the 2012 permission was implemented on site on 10 August 2016 by works for levelling the ground, making an access and constructing drains and a sewage pipe on the site.
3. The second application is for the house now known as Romsey Lodge which was built on site in Spring 2018 without the benefit of planning permission. This house is materially different in position and design to the holiday chalet approved for plot 1.

HISTORICAL FACTS

4. The planning history is set out in detail in the Statutory Declaration of Judith McKinnon of Romsey Lodge and it not recited here other than where relevant. The relevant exhibits to this statutory declaration are referred to in brackets as [JMx].
5. On 16 August 2013 planning permission was granted for two holiday chalets on the site of the stables and manege at Blindburn Hall [JM4]. This permission would have expired on 15 August 2016. On 4 August 2016 the conditions were discharged by permission 16/01873/DISCON [JM6] and on 10 August 2016 works commenced on site.
6. The works which took place on site before 10 August 2016 [JM7] were the following –
 - i. Demolishing the stables
 - ii. Levelling the ground across the site
 - iii. Construction of an access with hardcore wearing surface
 - iv. Laying of pipes and construction of drop chamber to the septic tankA couple of days later the water supply pipe was put in.
7. In Spring 2017 construction work started on a timber chalet. The plans of this building show a two-storey building with dormer windows, set at an angle to the riverbank with an entrance to the south-east and large glazing areas facing a terrace to the south-west elevation [JM8]. There is parking for two cars and a turning area south of the chalet.
8. In April 2018 an electricity supply was connected to the house and meters installed on plot1 and plot 2. On 1 May 2018 broadband was connected to the house [JM9] and on 4 May 2018 the house was occupied by Judith McKinnon (then Isbister) as her primary residence.

THE LAW

9. The commencement of development is provided for in s.56 – Time when development begun of the Town and Country Planning Act 1990. This defines in s.1 when development is initiated and identifies material operations. S.2 then defines when development is begun by reference back to the material operations. The “beginning” of development is relevant to time limiting conditions under s.91 of the TCPA 1990.
10. The practical effect of these sections is that undertaking one of the material operations in s.1 is adequate to commence development on site and keep a permission extant even if the rest of the development is not proceeded with in the short term. The material operations have to be comprised in the development and should comply with the approved plans. Any differences between the approved plans and the operations relied on are not fatal to a lawful implementation but should not be significantly different – see *Commercial Land Limited/Imperial Resources SA v Secretary of State for Transport, Local Government and the Regions* [2003] JPL358.
11. There is no requirement that the works must be carried out with the firm intention of carrying on with the development. It is enough that the works are “an unequivocal manifestation of the intention to beginning the development within a permitted time”.
12. The digging of a trench may suffice under ss.4(b) to implement a permission, even if it is then backfilled but it must be dug for the approved development and not for different development.
13. Laying out or constructing a road or part of a road ss.4(d) includes a private road and can be satisfied by clearing out land and pegging out a road or by certain excavation works.
14. The beginning of part of a development is sufficient to lift the time limit under this section for all of it. So for example building one bungalow is sufficient to implement a permission for seven – see *Salisbury District Council v Secretary of State for Environment* [1982] JPL 702.

THE APPLICANTS CASE

15. In relation to the first CLU this is to confirm that the permission granted on 16 August 2013 was implemented on site by no later than 15 August 2016 such that it remains extant. The evidence for implementation of this permission is clear and unequivocal. The permission was granted on 16 August 2013 and conditions 7, 8, 9 & 13 which required the submission of further details were properly discharged by application 16/01873/DISCON and the material operations which took place on site before 10 August 2016 were substantially more than is required under s.56 of the TCPA 1990. The building operations of (i) laying out the access and surfacing it and (ii) digging a trench and inserting sewage pipes are material operations in terms of s.56 and would individually be adequate to commence the development on site. The permission was therefore implemented before it expired.
16. Moreover the development approved by the permission could continue on site with the completion of the approved chalet building on plot 2. The fact a different building was put on plot 1, a completely different part of the site, does not invalidate the whole permission. By way of analogy if a housebuilder implements a permission for 10 houses and then secures a

different permission to build a bungalow instead of a house on one of the plots this does not invalidate the whole permission. It simply means the first permission cannot be implemented on that particular plot as it would be physically impossible to do so.

17. It is accepted that the chalet built on plot 2 would be bound by the conditions of the 2012 permission including condition 3 which restricts occupation of the chalet to “holiday purposes only” and imposes the requirement to keep a register of occupiers.
18. The second CLU is for the new house which was built on plot 1 in 2017 without the benefit of planning permission at all. The approved plans for this chalet are PDM/12/BLINDBURN/03, 04 & 05 [JM5] whereas what was built on site is shown in the submitted plans for the CLU, namely 17BBH (EW) 02 & 17BBH (GA) 21-24. The differences between the two sets of plans are numerous and substantial, as follow –
 - i. location on the site
 - ii. orientation on the site
 - iii. shape and position of parking and turning area
 - iv. footprint of building
 - v. internal layout of building (different rooms, position and sizes)
 - vi. height of building, eaves and ridge
 - vii. and occupied since May 2018 is position and size of windows and doors
 - viii. position of terrace
19. Basically the building which has been completed on plot 1 is not the building which was approved in 2012. It is a dwelling house built without planning permission at all. The house has been occupied by Judith MacKinnon and her family continuously since May 2018.
20. The relevant limitation period for taking enforcement action against building operations is four years under s.171B(1). As this house has been on the site and occupied for four years and three months it is now immune from enforcement action and therefore lawful development.
21. It follows that the house known as Romsey Lodge is lawful as a dwellinghouse with no limitations as to occupation.
22. The two CLUs are sought in these terms and on the basis of the evidence provided by Judith MacKinnon in the statutory declaration of 20 May 2022.

Dated this third day of August 2022

MISS NICOLA ALLAN

Barrister at Law

MRTPI