

# Planning Statement

**Site:** Hogbrook Farm, Hogbrook Hill, Lane Alkham, CT15 7BU

**Proposal:** Lawful Development Certificate to confirm planning permission 20/01409 (Change of use and conversion of existing outbuilding to dwelling, erection of a wall, single storey side extension and rear hydrotherapy pool, landscaping and associated parking) has been lawfully implemented

## Introduction

This statement supports a lawful development certificate application to confirm that planning permission 20/01409 has been lawfully implemented through a material commencement of development.

Evidence submitted to confirm lawful commencement of planning permission 20/01409 includes:

- Photographic evidence of the drainage system installed for the approved development.
- Building regulation records for 'Building Work Started' the approved drainage works in relation to the approved dwelling at Holbrook Farm.
- Approval of all pre-commencement conditions for 20/01409.
- Case Law relating to lawful implementation of a planning permission.

## Planning History

**20/01409** - Change of use and conversion of existing outbuilding to dwelling, erection of a wall, single storey side extension and rear hydrotherapy pool, landscaping and associated parking (part demolition of outbuilding and wall) - Approved with condition on 27 January 2021

Planning permission 20/01409 was granted subject to the following summarised conditions:

- Condition 1 - Development shall commence before 27 January 2024.
- Condition 2 - Approved Plans.
- Condition 3 - Submission of materials prior to commencement above ground level.
- Condition 4 - Development carried out in accordance with shown slab levels.
- Condition 5 - Reporting of found contamination.
- Condition 6 – Submission of ecology details prior to commencement.
- Condition 7 - Submission of landscaping scheme prior to occupation.
- Condition 8 - Approved hydrotherapy pool used for ancillary domestic purposes.
- Condition 9 – Parking & turning areas to be implemented prior to occupation.
- Condition 10 - Provision of electric car charging points prior to occupation.
- Condition 11 - Refuse storage to be installed. No commencement period included.
- Condition 12 - Submission of CMP prior to commencement of development.
- Condition 13 - Submission of rooflight details prior to the commencement.
- Condition 14 - Removal of permitted development for extensions.
- Condition 15 - Removal of permitted development for gates, wall and fences etc.

Pre-commencement development conditions 6, 12 and 13 require details to be submitted before the approved development can commence. The decision notice for 20/01409 is attached at appendix 1.

**CON/20/01409/A** - Discharge of condition 3 (materials), condition 6 (ecological enhancements), condition 7 (standard landscape design), condition 12 (construction plan), condition 13 (roof lights) pursuant to application 20/01409 Change of use and conversion of existing outbuilding to dwelling, erection of a wall, single storey side extension and rear hydrotherapy pool, landscaping and associated parking (part demolition of outbuilding and wall) - All conditions approved on 2 January 2024.

The decision notice is not shown on the Council's website, however the Council's website clearly indicates that the conditions have been approved via the following link: -

<https://publicaccess.dover.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

## **Building Control History**

BN/23/09322 - New Dwelling Building Work Started - Confirmed 19 December 2023.

## **Relevant Legislation/Guidance**

Section 191 (1) states if any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

Section 191 (2) states that for the purposes of the Act, uses and operations are lawful at any time if 'no enforcement action may then be taken in respect of them (whether because they did not involve development or planning permission or because the time for taking enforcement action has expired or for any other reason'.

The onus is on the applicant to provide sufficient information to enable the Council to consider whether, on the balance of probabilities that the development has occurred for the requisite period prior to the date of the application.

Relevant parts of the Act are considered to comprise the following:

Section 171B(1) imposes a four-year time limit where the breach of planning control consists of the carrying out of operational development.

Section 171B(2) provides: "Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling-house, no enforcement action may be taken after the end of the period of four years."

Section 171B(3) states: In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

## Implementation of Planning Permission

Under the Town and Country Planning Act 1990 (TCPA 1990) development is defined as the “carrying out of building, engineering, mining or other operations in, on, over or under the land or the making of any material change in the use of any buildings or other land”.

To implement a planning permission the developer must:

- Ensure all planning conditions requiring compliance prior to commencement of development have been complied with.
- Carry out a “material operation” (as defined in the TCPA 1990).

Material operations include:

- The digging of a trench which is to contain the foundations, or part of the foundations, of a building.
- The laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench.

## Notable Court cases:

In *Malvern Hills DC v SSE & Barnes and Co* [1982] JPL 439 the court established that the threshold for what is deemed to be material operations is low. The marking out of a line and the width of a road with pegs amounted to “material operations” within section 56(4)(d) of the TCPA 1990.

In *Spackman v SSE and Another* [1977] 33 P&CR 430 the issue was whether or not material operations were carried out for the construction of a dwellinghouse. No foundations had been laid and the works that had been carried out included a partially constructed soakaway and drainage trenches in each of which had been laid piping leading to the soakaway. The High Court held that underground drainage works that were no longer visible without excavation constituted the commencement of development even where the foundations or trenches themselves referred to in section 56(4) had not yet been created.

Cases have also been explored where there was no evidence that the works carried out had been done so in accordance with an approved drainage system leading to the foundations or otherwise and where the original planning permission did not require the submission of a drainage scheme.

On the whole case law shows that the threshold for works and implementation of permission is low. Generally, if works are undertaken by a mechanical digger and involved the excavation of land then the works would not be *de minimis* and would constitute operational development.

In summary, the installation of a drainage system required in relation to an approved development (even if not shown on the approved plans or required in relation to a planning condition) would constitute operational development and the lawful implementation of the relevant planning permission, providing there are no pre-commencement planning conditions that require approval from the LPA.

## **Applicants evidence**

This application seeks confirmation through a lawful development certificate that planning application 20/01409 was lawfully commenced / implemented before the expiring date on the decision notice, i.e. before 27 January 2024.

The following evidence is submitted in support of this application:

- Building control decision BN/23/09322 issued on 19 December 2023 confirms building work was started on the approved dwelling at Holbrook Farm. An extract from the Council's building control website is attached at appendix 2.
- Photographic evidence of the drainage system being installed for the approved dwelling at Hogbrook Farm. Photos attached at appendix 3.
- The installed drainage system constitutes a material operation and the lawful implementation of planning permission 20/01409.
- Condition discharge application CON/20/01409/A confirms all relevant pre-commencement conditions have been approved by Dover Council. An extract from the Council's website confirming approval of these conditions is attached at appendix 4.

## **Conclusion**

It is clear from the evidence presented by the applicant to the Council that a material commencement of development has occurred following the installation of a new drainage system for the approved dwellinghouse at Hogbrook Farm. The drainage system was installed before the expiry date of planning permission 20/01409 therefore the planning permission has been lawfully commenced and implemented.

In addition, all the relevant pre-commencement conditions pertaining to planning permission 20/01409 have been formally approved by Dover District Council.

On the basis of the evidence provided by the applicant, there is sufficient evidence to demonstrate that planning permission 20/01409 has been lawfully implemented.

In addition, based on the above assessment the installation of the drainage system in connection with the dwellinghouse approved under planning permission 20/01409 constitutes a material operation and the lawful implementation of the planning permission.

We therefore respectfully request that the Council issues a lawful development certificate confirming that planning permission 20/01409 has been lawfully implemented and the

approved dwellinghouse and associated development can be carried out at any time in compliance with the conditions stated on the approved decision notice.