DLA TOWN PLANNING LTD

Planning Statement

Application for a Certificate of Lawfulness

Application for the Certificate of Lawful Proposed Use for the continuation of development of three dwellings with associated garages
Hook Lane, Northaw

DLA Ref: 19/015
February 2019

CONTENTS

1.0 INTRODUCTION

1.1.0 Background

This report relates to an application for a Certificate of Lawful Proposed Use for the continuation of development of three dwellings and associated garages on Hook Lane, Northaw.

1.2.0 Summary

- The submitted evidence gives sufficient, precise and unambiguous information to support the application and therefore a certificate of lawful use is justified for the proposed use.

- The permission was subject to a time limit of five years from the Reserved Matters permission granted on 9th August 1974. The demolition occurred in early 1975 within the five-year expiry date and therefore the permission has not lapsed.

- Demolition is considered to be a 'material operation'.

2.0 SITE & CONTEXT ANALYSIS

2.1.0 Location

2.1.1 The site is located to the east of Potters Bar and to the south of Northaw Village.

2.2.0 Application Site

2.2.1 The application site previously formed part of a larger established site known as 'Hook Kennels'. This was occupied by the Greyhound Racing Association (GRA), which at the time was the largest training centre in England and employed over 400 people.

2.2.2 During the period from 1972 and 1992, the Peerglow Group acted in various transactions with the GRA, which included the refurbishment of the Trainers Cottages and their subsequent sale on the open market as private dwellings. The GRA also instructed Peerglow to arrange for the demolition of Hook Cottages, which were to be replaced by a new build terrace (subject site) of three, opposite the refurbished Trainers Cottages on Hook Lane. This was secured by outline permission S6/1974/0205/.

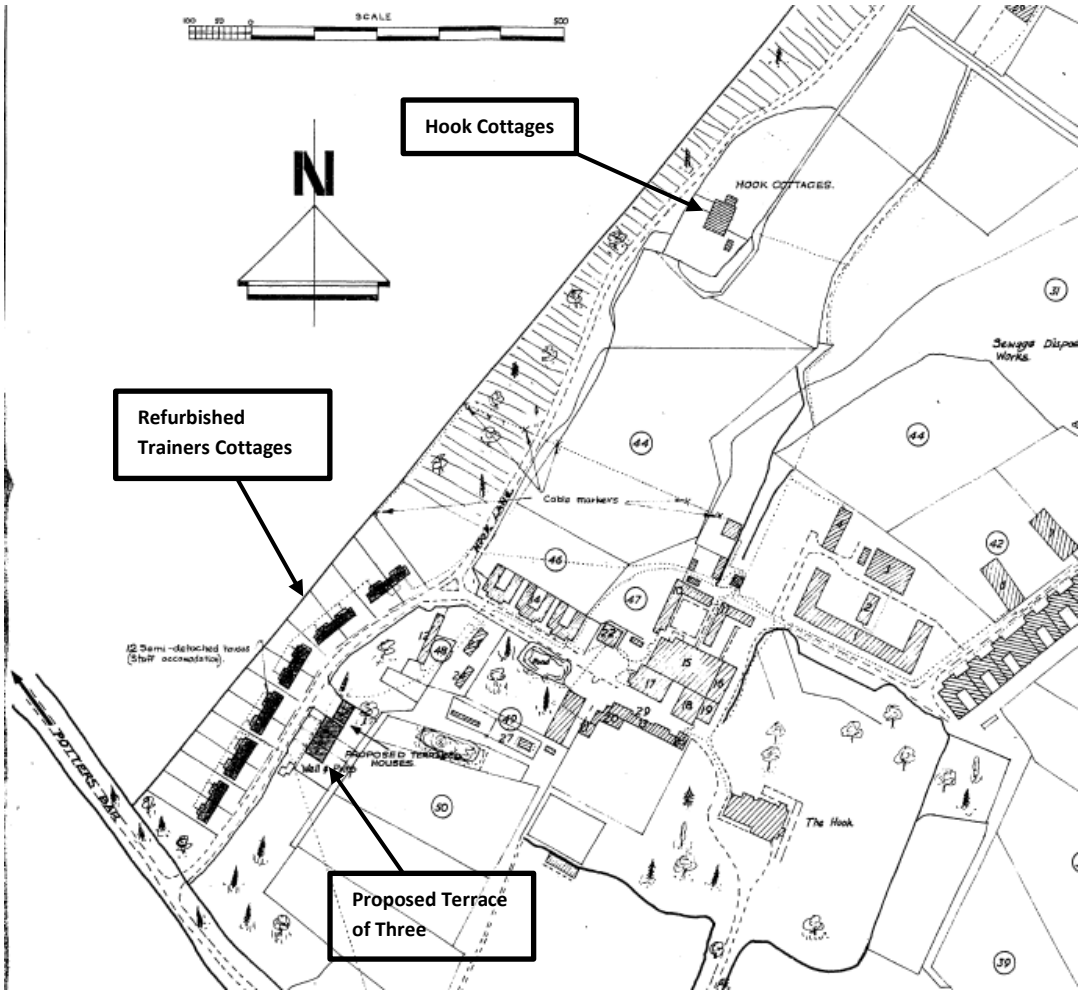

Figure 1: Location of the proposed units (plans from the 1974 outline permission- not to scale)

2.2.3 The replacement units on Hook Lane were delayed as Peerglow entered in further negotiations with the GRA to acquire the remaining balance of the site. The remainder of the freehold was eventually acquired by Peerglow, and the replacement dwellings on Hook Lane were put on hold as a total redevelopment of the main area took priority.

2.2.4 Subsequently, the main area was comprehensively redeveloped for a change of use from the Greyhound Racing Association headquarters to residential use following permission granted by application S6/1987/0171/FP. The redeveloped site comprises 38 dwellings, which are predominantly small terraced properties arranged around a landscaped courtyard. Five large detached properties were included within the permission. Before the replacement dwellings on Hook Lane could be built, the parent company of Peerglow (the Mowat Group) went into administration in September 1992 and there were no available funds to continue.

2.2.3 The remainder of the site is relatively undeveloped. There is a c800m bridleway to north of Hook Lane, which descends towards the valley of Northaw Brook and eventually reaches the Village of Northaw.

2.3.0 **Context**

2.3.1 Adjacent to the site is a large car park and various buildings associated with the Oshwal community and religious centre used by the Jain Community, which was sold as part of the negotiations between the GRA and Peerglow. Directly to the south of the site across Coopers Lane Road is a large area of woodland belonging to Herts and Middlesex Woodland Trust, which stretches southwards until it abuts the M25.

2.3.2 The surrounding character is rural and consists predominantly of large areas of woodland, pastoral farmland and scrub, which is contained by established hedgerows. The washed-over village of Northaw is some 1km to the north and the large built-up settlement of Potters Bar is some 0.65km to the west.

3.0 RELEVANT PLANNING HISTORY

3.1.0 **Application Site**

3.1.1 The relevant history of the application site is summarised in Figure 3.1.0 below.

LPA Ref	Proposal	Outcome
S6/1974/0205/	Site for terrace of three houses and garages	Granted- 28/03/1974
S6/1974/0404/	Demolition of 3 cottages and erection of a terrace of 3 bedroomed houses	Granted- 09/08/1974

3.2.0 **Other Relevant Sites**

3.2.1 **S6/1987/0171/FP**

Change of use of existing racing association HQ to residential comprising conversion & extensions to form 38 dwellings & car park & 5 detached houses & garages. Granted (31/10/1987).

3.2.2 **4/00127/11/LDP (Dacorum Borough Council)**

A Certificate of Lawful existing use was submitted for the continuation of development of the site for nine dwellings under implemented planning permissions W/37/56 and W/2224/64.

3.2.3 The previous application (4/01778/10/LDE) was withdrawn following Counsel's advice (Stephen Whale) (Appendix 1). Counsel concluded that the applicants should apply for a Certificate of Lawfulness for proposed operations, rather than existing. He concluded that the digging of trenches and construction of foundations, on the balance of probabilities, was sufficient to establish that development had begun, by way of a specified operation.

3.2.4 He stated that there is no principle in planning law that a valid planning permission capable of being implemented according to its terms can be abandoned. It was concluded that, provided that the 1956 planning permission is capable of being implemented according to its terms, it cannot be said to have been abandoned in law and the owner is entitled to continue to construct and complete the development in accordance with it.

4.0 THE PROPOSED DEVELOPMENT

4.1.0 The site is on the east side of Hook Lane, opposite the existing semi-detached dwellings that were originally used by the GRA as accommodation for the greyhound trainers (Figure 2). Outline permission (S6/1974/0205/) for the three units and associated garages was secured on 28th March 1974, subject to four conditions (Appendix 2). One of which stated, *"that before the occupation of the dwellings hereby permitted, the existing buildings known as 'Hook Cottages' shall be demolished and the site reinstated"*.

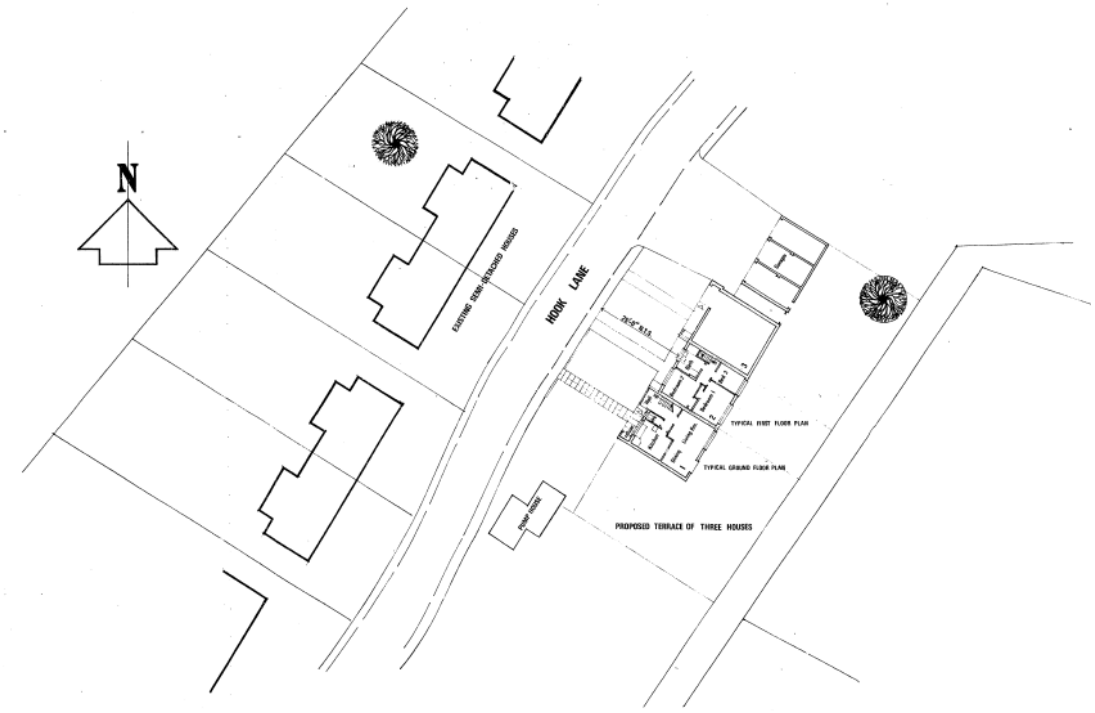

Figure 2: Location of proposed dwellings on Hook Lane (not to scale)

4.1.1 Hook Cottages were demolished in early 1975 within the five-year expiry date that began after Reserved Matters permission (S6/1974/0404/) (Appendix 3) was secured on 9th August 1974. This is supported by statutory declarations of three former employees of Peerglow, including Brian Dunlop (the CEO), Graham Wright (the Sales Director) and Andrew Elliot (the Construction Manager) who handled the proposed development. Figures 4 and 5 show the drainage left from the demolition of Hook Cottages, which has now been taken over by natural regeneration.

4.1.2 It is proposed to continue the development of three houses with associated garages as authorised by planning permissions S6/1974/0205/ and S6/1974/0404/.

Figure 3: Hook Cottages

Figure 4: Evidence of drainage left from the demolition of Hook Cottages

Figure 5: Evidence of drainage left from the demolition of Hook Cottages

5.0 THE SUPPORTING EVIDENCE

5.1.0 The evidence submitted with the application is as follows:

5.1.2 **Planning permissions**

5.1.3 Both Outline and Reserved Matters planning permissions demonstrate that before the terrace of three could be built, Hook Cottages had to be demolished within the five-year expiry date. The cottages were demolished in early 1975.

5.1.4 **Drainage**

5.1.5 Figures 3 and 4 show that there is still physical evidence of the drainage left over from the demolition of Hook Cottages. This corroborates the Statutory Declarations signed by Brian Dunlop, Graham Wright and Andrew Elliot.

5.1.6 **Statutory Declarations**

5.1.7 Statutory Declarations from Brian Dunlop, Graham Wright and Andrew Elliot have been submitted:

- Brian Dunlop was the CEO of Peerglow Group from 1972 to 1992 and was overall responsible for the acquisition of GRA's Land and its subsequent residential redevelopment. He confirms that Hook Cottages on Hook Lane were demolished in early 1975 (Appendix 4).

- Graham Wright was the Sales Director of Peerglow Group from 1975 to 1992 and was responsible for the specifications and sales of properties on the GRA site. He confirms that Hook Cottages on Hook Lane were demolished in early 1975 (Appendix 5).

- Andrew Elliot was the Construction Manager of Peerglow Group from 1974 to 1993 and was responsible for the day to day running of the site, including new builds and refurbishments. He confirms that Hook Cottages on Hook lane were demolished in early 1975 (Appendix 6).

6.0 PLANNING CONSIDERATIONS

6.1.0 The Planning and Compensation Act 1991 introduced Certificates of Lawful Use for existing as well as proposed developments. The Government's Planning Practice Guidance makes it clear that the relevant test of the evidence is the balance of probability.

"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

"In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved."

6.2.0 **The Town and Country Planning Act Section 56**

6.2.1 Section 56 of the Act states:

"(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."

6.2.2 Subsection (4) defines 'material operation' including as follows:
[(aa) any work of demolition of a building;]

6.2.3 It can be seen therefore that works undertaken comprising demolition of Hook Cottages, are a material operation and that the planning permission has been implemented.

6.3.0 **Abandonment**

6.3.1 It is important to note that although existing use rights may be abandoned it is not possible to abandon a planning permission. In 'Planning Law and Practice by James Cameron Blackwell he states:

"The abandonment of a planning permission should not be confused with the abandonment of use of land. In White v Secretary of State and Congleton BC (1989) JPL 692; 58P & CR 281, the Court of Appeal held that the use of land which was in existence on 1 July 1948 was capable of being abandoned. In such a case, the resumption of the use would constitute development, and planning permission would be required (see, also, Hartley v Minister Housing and Local Government (1970) 1QB413; (1969) 3 All ER 1658; 2WLR1).

In a situation where a planning permission has been activated, and the lpa has taken no action to serve a completion notice, can that permission ever be regarded as having been abandoned? This issue was finally resolved in Pioneer Aggregates (UK) Ltd v Secretary of State (see para 14.3, above), in which the House of Lords arrived at a unanimous decision that there is no principle in planning law that a valid planning permission, capable of being implemented according to its original terms, can be abandoned. The important basis of this judgment are contained in Lord Scarman's comments, which made it clear that, on the question of abandonment, he agreed with both courts below that there was no such general rule in planning law. In certain exceptional circumstances not covered by legislation, the courts have held that a landowner, by developing his land, can play an important part on bringing to an end, or making incapable of implementation, a valid planning permission."

He went on to comment that:

"… planning control is a creature of statute. It is a field of law in which the court should not introduce principles or rules derived from private law unless it be expressly authorised by Parliament or necessary in order to give effect to the purpose of the legislation. Parliament has provided a comprehensive code of planning control currently found in s 75(1) of the Town and Country Planning Act."

"The judgment reinforced the principle that, unless the lpa grants a temporary, time-limited consent or takes action to revoke or modify a previous planning permission, the act of granting permission to develop land enures for the benefit of the land and persons having an interest in the land."

(The full extract is reproduced as Appendix 7.)

6.4.0 **The Intention of the Developer**

6.4.1 The Encyclopedia of Planning Law and Practice commentary on the Planning Act refers to 'colourable' implementation. The courts at one time insisted that the works must not be carried out simply to keep a permission alive. They must 'genuinely be done for the purpose of carrying out a development'. The various case law is included in the commentary reproduced as Appendix 8.

6.4.2 However in more recent court cases this view has been reversed. In East Dunbartonshire Council v Secretary of State for Scotland [1999] the court rejected the submission that the specified operations must be undertaken with some particular intention. The court preferred to apply an objective approach and to consider, first, whether what has been done has been done in accordance with the relevant planning permission. Secondly the court should consider whether it was material in the sense of not being *de minimus*. This approach has been adopted in subsequent cases.

6.4.3 In any event, at the time when the demolition was carried out there was an intention to develop the land and this intention has continued through the period.

6.5.0 **De Minimus**

6.5.1 The second issue referred to above is whether the works are considered *de minimus.* The implementation works carried out are clearly more than *de minimus* works, as they comprise demolition of Hook Cottages.

7.0 CONCLUSIONS

7.1.0 This report relates to the Certificate of Lawful Proposed Use for the continuation of development of three dwellings and associated garages. I consider that further formal planning permission is not needed in order to complete the development granted outline permission and subsequent approval of details in 1974.

7.1.1 The submitted evidence gives sufficient, precise and unambiguous information to support the application and therefore a certificate of lawful use is justified for the proposed use. Moreover, as set out in paragraph 6.1.1 the test for the evidence is the balance of probabilities, which is satisfied.

7.1.2 Section 56 of the Town and Country Planning Act 1990 defines the demolition of a building as a 'material operation'. It also states that development shall be taken to be begun on the earliest date on which any material operation comprised in the development is carried out.

7.1.3 The intention of the developer was always to develop the plot and work commenced accordingly. The works are more than *de minimus* as they comprise demolition of Hook Cottages.

7.1.4 The permission was subject to a time limit of five years from Reserved Matters permission granted on 9th August 1974. The demolition occurred in early 1975 within the five-year expiry date and therefore permission has not lapsed.

8.0 APPENDICES

Appendix 1

IN THE MATTER OF LAND TO THE REAR OF LONGFIELD, LANGLEY ROAD, CHIPPERFIELD

OPINION

Introduction

1. I am instructed by Dacorum Borough Council ("the Council") as local planning authority. I am asked for my opinion or comment in relation to a number of issues arising from an application under section 191 of the Town and Country Planning Act 1990, concerning land to the rear of Longfield, Langley Road, Chipperfield.

Background

2. Arriving at the correct conclusions in relation to the issues before me means delving back several decades into the planning history of the site.

3. On 21 February 1956, planning permission was granted under the Town and Country Planning Act 1947 for "Construction of Road and use of land for the erection of nine dwellings rear of Longfield, Chipperfield." It would appear that this was an outline planning permission. Certainly, the 1965 decision notice uses the terms (cross-referring to the 1955 application and 1956 permission) "outline application" and

1

"outline planning permission". I note that the term outline planning permission is used in the report accompanying the section 191 application (paragraph 3.1).

4. The 1956 outline planning permission was granted subject to two conditions, neither of which imposed any time-limit on the permission or any deadline before which approval of the finer details had to be obtained or before which development had to be begun.

5. In 1965, the local planning authority gave approval under the Town and Country Planning Act 1962 to the details which were reserved for subsequent approval in the 1956 planning permission. This was subject to compliance with a condition as to agreement concerning the colour of the roof tiles. There was no challenge to the imposition of this condition. No such agreement was ever sought or obtained. However, I do not regard it as a condition precedent (and it certainly was not expressed in that way) so (applying the Whitley exception principle) it probably cannot be argued that the subsequent beginning of development pursuant to the planning permission (if that is indeed what occurred) was unlawful. No kind of time-limit or deadline was imposed on this 1965 approval. For the record, I have identified a minor issue as to the precise date of this 1965 approval. The date 1 February 1965 is often cited. However, some of the plans are stamped with the date 18 January 1965 and this is the approval date according to a letter dated 7 October 1974. The date on my copy of the 1965 decision notice is very unclear, although the day of the month appears to have two digits. Nothing turns on whether it was 18 January or 1 February 1965.

6. The applicant asserts that on 9 February 1967 excavations for "some" of the houses were dug by way of trenches (application report paragraph 3.3). However, according

to a 1982 memorandum the developer wrote to the Chief Planning Officer in October 1981 to say that on 9 February 1967 excavations to "one or more" of the houses were dug. Records of the asserted contemporaneous Building Inspector's approval do not exist. The applicant also asserts (application report paragraph 3.3) that concrete foundations were laid by 16 February 1967 and approved by the Building Inspector the next day. I do have within my papers a copy of a document bearing a manuscript note and which appears to bear out this assertion so far as one plot at least is concerned. Moreover, the 7 October 1974 letter refers to the foundations of one of the dwellings having been excavated and constructed prior to the commencement of the Land Commission Act 1967.[1] The statutory declaration of Mr Pritchard refers to foundations having been laid between summer 1966 and 1969. Officers have been on site and noted two sets of foundations positioned in accordance with the approved plans. I will proceed on that basis, but, for the avoidance of any doubt, my conclusion would be exactly the same even if foundations were laid for only one dwelling in accordance with the approved plans.

7. I think the Council is bound to conclude on the evidence before it that a trench was dug and foundations laid for at least one of the approved dwellings in the period 9 to 16 February 1967.

8. Nothing of any consequence has happened on site since, save perhaps for the backfilling of the trench(es).

[1] Under section 27 of the Land Commission Act 1967, betterment levy was payable where the carrying out of a project by material development of land was begun on or after 6 April 1967. This may well have been the trigger for the work on site, as it was in another relevant case (Agecrest v Gwynedd CC [1998] JPL 325). Incidentally, this 1974 letter also describes the 1956 decision as referable to an outline application and it describes the 1965 decision in terms of reserved matters approval. The same goes for the 1982 memorandum.

Time-limits

9. Local planning authorities have had power to grant planning permission for a limited period ever since the 1947 Act.[2] But it was only with the enactment of the Town and Country Planning Act 1968 that planning permissions were to be granted or were deemed to have been granted subject to a condition whereby development had to begin within a certain period (see sections 65 to 68 of this Act, which the applicant's agent has overlooked). Section 65 (limit of duration of planning permissions past and future) did not apply to outline planning permissions.[3] Section 66 (outline planning permissions) contained somewhat convoluted provisions for the imposition of mandatory or deemed time-limits on outline planning permissions. To cut a long story short, because in this case both outline planning permission was granted without any time-limit condition and development was begun (see below) before the beginning of 1968, the mandatory and deeming provisions of section 66 are immaterial in this case. Section 67 defined when development was taken to be begun by reference to section 64(3) of the Land Commission Act 1967.

10. Sections 41 and 42 of the Town and Country Planning Act 1971 concerned the limit of duration of planning permissions and of outline planning permissions. But they did not apply to planning permissions granted before 1 April 1969 (Schedule 24, paragraph 18). By reason of Schedule 24, paragraph 20, certain outline planning permissions granted before 1 April 1969 were deemed to have been granted subject to a time-limit condition insofar as they were granted without any express time-limit condition and insofar as development was not begun before the beginning of 1968.

[2] See section 14 of that Act.

[3] Section 65(4)(a).

Given that development was begun in this case before that date (see below) this paragraph is immaterial.[4]

11. In short, and on the basis that development was begun before the beginning of 1968, nothing in the development of planning law since the 1968 Act has served to impose a time-limit on the 1956 outline planning permission or the 1965 approval.

Development begun

12. Section 56 of the Town and Country Planning Act 1990 has been invoked as to the meaning of development being begun. Given the chronology of events, my opinion is that, strictly, it is better to invoke section 67 of the 1968 Act coupled with section 64(3) of the Land Commission Act 1967. The former stipulated that development shall be taken to be begun on the earliest date on which any specified operation (as defined in the 1967 Act) comprised in the development begins to be carried out.

13. Section 64(3) of the 1967 Act defined "specified operation" as, amongst other things, "any work of construction in the course of the erection of a building" and, "the digging of a trench which is to contain the foundations, or part of the foundations, of a building". The earliest date on which any such specified operation comprised in the development was begun to be carried out in this case was 9 February 1967; in any event it was no later than 16 February 1967.

14. It is settled law that "very little need be done" to convince the courts that development has begun: Malvern Hills DC v SSE [1982] JPL 439. The digging of a trench may suffice even though the intention is not to proceed with the whole development

[4] Schedule 24, paragraph 19, is immaterial because it does not apply to outline planning permissions (Schedule 24, paragraph 19(2)(b)).

immediately and the trench is subsequently backfilled: High Peak BC v SSE [1981] JPL 366. In the present case, it would appear that the trench or trenches were backfilled at some point, I know not when, since there is a reference in the agent's report (paragraph 4.2) to the footings having been "uncovered". I infer that any such backfilling was later than the summer of 1969, because at that time Mr Pritchard had to be careful not to damage the foundations or his cutting blades. It seems to me that Mr Pritchard would not have realised that he had to take such care if the trench had by then already been backfilled such that the foundations were no longer exposed. The report of the High Peak case is not absolutely clear as to how much time elapsed between the digging of the trench and the backfilling. The implication is that very little time elapsed at all. In the present case, the period was probably at least two years (9 February 1967 to summer 1969). Moreover, in this case the foundations for at least one dwelling were laid whereas in High Peak no foundations were laid at all. This suggests to me that the applicant in this case has an even stronger claim for saying that development was begun than did the developer in High Peak.

15. The next issue is whether the small amount of operational development undertaken suffices to begin the entirety of the development for which planning permission was granted, or whether the planning permission is severable.

16. Perhaps the best precedent to consider in this respect is Salisbury DC v SSE [1982] JPL 702. There was a 1961 outline planning permission for seven bungalows on a large parcel of land. Only one of the bungalows was constructed prior to the expiry of the relevant time-limit. The court accepted the argument that it was not a case of seven different planning permissions; rather, it was a case of a single application and a single planning permission. The fact that the scheme was marked out in plots did

not alter the fact that it was a single whole which could be dealt with and for which permission was given. The court held that if you give one single document which does not differentiate between the sites and speaks of a development in the singular and gives permission for that specific development then it is dealing with the overall whole.

17. In the present case there was apparently a single application (dated 28 December 1955), a single planning permission and a single reserved matters approval. The scheme was marked out in plots, but, applying Salisbury, that is not determinative. The plan accompanying the application referred to the proposed "development" (singular), as did both decision notices. Nine dwellings on a large parcel of land is little different from seven dwellings on a large parcel of land. It cannot be said, adopting the language of the Planning Encyclopedia at P56.17, that the planning permission is "clearly severable". On the contrary, the application of Salisbury to the facts suggests that it is not severable. My conclusion is that it is not.

18. My conclusion on the first issue, in the light of all the above, is that the 1956 planning permission has never been made the subject of a time-limit in that the development was, on the balance of probabilities, begun by way of a specified operation by, at the latest, 16 February 1967.[5]

Abandonment

19. My conclusion on this issue can be shortly stated. There is no principle in planning law that a valid planning permission capable of being implemented according to its terms can be abandoned: Pioneer Aggregates Ltd v SSE [1985] 1 AC 132, 145G, *per*

[5] For the avoidance of any doubt, I agree with the applicant's agent with respect to intention and *de minimis*.

Lord Scarman. In that case operational development had commenced in 1950 pursuant to a planning permission granted that year and had continued until 1966, at which point the owner gave notice to the local planning authority that it would cease quarrying at the end of that year (which it did). In 1978, twelve years later, a new owner wished to resume quarrying pursuant to the original 1950 planning permission. The upshot of the judgment in the House of Lords was that it was entitled to do so.

20. Provided that the 1956 planning permission is capable of being implemented according to its terms, I am of the opinion that it cannot be said to have been abandoned in law and that the owner is entitled to continue to construct and complete the development in accordance with it.

Weight

21. It is of course a trite principle of planning law that an extant planning permission is capable of being a material consideration in the determination of a planning application for development on the same site. This is often referred to as the "fall-back principle".

22. In order for the fall-back principle to operate such that the extant permission is material to the determination of a current application, I would suggest that the first decision must be sufficiently closely related to the matters in issue in the current application. That is not something I can determine absent any current application.

23. On the assumption that there is a current application, and that the extant planning permission is material to its determination, the question then arises as to how much weight should be afforded to the extant permission.

24. Strictly speaking, the weight to afford to a material consideration is a matter for the Council not me. But I can advise on the matter.

25. I would suggest that in order to be afforded any weight, assuming it is material, there must be a real as opposed to a merely theoretical possibility of the 1956 planning permission being built out. Those instructing me are sceptical as to this possibility, and I share that scepticism. The applicant should be invited to confirm that he has no intention of building out the 1956 scheme. If he asserts that he does intend to do so, he should be invited to provide details of contracts entered into or of discussions with contractors and the like. If the Council concludes that there is not a real possibility of the 1956 scheme being built out, it is entitled to afford the extant planning permission no weight in the determination of any future application. There is very good authority for the proposition that, in appropriate circumstances, a local planning authority in the reasonable exercise of its discretion may give no significant weight or even no weight at all to a consideration material to its decision, provided that it has had regard to it: Tesco Stores Ltd v SSE [1995] 1 WLR 759, 661B-C, *per* Lord Hoffmann (cited with approval very recently in CALA Homes (South) Ltd v SSCLG [2010] EWHC 3278 (Admin) at [36]).

26. My guidance would be that, absent any evidence that there is a real possibility of the 1956 scheme being built out, the Council should have regard to the 1956 planning permission but afford it no weight in the determination of any future planning application on site.

The section 191 application

27. I cannot conclude this Opinion without drawing attention to the oddities of the current section 191 application.

28. The applicant would, in reality, like a certificate certifying that he is entitled lawfully to build out the 1956 planning permission. In other words, he is contemplating (a) future and (b) operational development.

29. However, the section 191 application is (section 7) with respect to an "existing" Use Class C3 "use" (as to which there is none), before going on (section 8) to look to the future ("Continuation of the [operational] development...") notwithstanding the fact that section 8 is concerned with "existing" uses, building works or activities.

30. It seems to me that the applicant should have applied under section 191 for a certificate certifying that the existing operation (trench(es) and foundations) is lawful, or else he should have applied under section 192 for a certificate certifying that proposed operations (the building out of the extant planning permission) would be lawful.

31. I would urge the Council to take up these issues with the applicant, the result of which may well be an amended or new application for a certificate.

Conclusion

32. Those instructing me are more than welcome to contact me here in chambers in the event of any queries arising out of this Opinion.

STEPHEN WHALE

4-5 GRAY'S INN SQUARE, 23 DECEMBER 2010

Appendix 2

D.C.O.3.

H.C.C. Code No. 6/205/74

L.A. Ref. No. 246-74

ADMINISTRATIVE COUNTY OF HERTFORD

The Council of the BOUGH OF .....

URBAN DISTRICT OF .....

RURAL DISTRICT OF .... [illegible] .....

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

To Greyhound Racing Association Ltd.,
c/o Greenwood, Stott & French,
18, The Green,
Richmond, Surrey.

Site for terrace of 3 houses and garages.

at Hook Kennels, Coopers Lane, Northaw.

Brief description and location of proposed development.

In pursuance of their delegated powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council on behalf of the Local Planning Authority hereby permit, in accordance with the provisions of Article 5(2) of the Town and Country Planning General Development Order, 1973, the development proposed by you in your outline application dated 14.3.74 and received with sufficient particulars on 18.3.74 and shewn on the plan(s) accompanying such application, subject to the following conditions:-

1 The development hereby permitted shall not be carried out otherwise than in accordance with detailed plans and drawings showing the siting, layout, design and external appearance of the building(s) and the means of access thereto and the landscaping of the site which shall have been approved by the local planning authority before any development is begun.

2 (a) Application for approval in respect of all matters reserved in Condition 1 above shall be made to the local planning authority within a period of [illegible] years commencing on the date of this notice.
(b) The development to which this permission relates shall be begun by not later than whichever is the later of the following dates:-
(i) the expiration of a period of [illegible] years, commencing on the date of this notice.
(ii) the expiration of a period of [illegible] years commencing on the date upon which final approval is given by the local planning authority or by the Secretary of State or, in the case of approval given on different dates, the final approval of the last such matter to be approved by the local planning authority or by the Secretary of State.

3 **The proposed garage shall be used solely for the housing of private motor vehicles and not in connection with any trade, business or industry.**

4 **That before the occupation of the dwellings hereby permitted, the existing buildings known as "Hook Cottages" shall be demolished and the site reinstated.**

26/40

Please turn over

Appendix 3

D.C.6.

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

Town Planning Ref. No.	S/ 0465/74
Other Ref. No.	

THE DISTRICT COUNCIL OF WELWYN HATFIELD

IN THE COUNTY OF HERTFORD

To G. R. A. Promotions Limited
White City Stadium
Wood Lane
LONDON W12 7RU

AND: [illegible] Stott and French
Chartered Architects
13 The Green
Richmond
Surrey

Demolition of 3 cottages and erection of a terrace of 3 three bedroomed houses.
at Hook Kennels, Hook Lane, Northaw, Herts.

Brief description and location of proposed development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder the Council hereby give approval to the details which were reserved for subsequent approval in outline planning permission no. S/205/7[illegible] granted on 28th March 1974 at the abovementioned location in accordance with the drawings submitted by you, with your application dated [illegible] May 1974

Dated [illegible] day of [illegible] 19[illegible]

Signed [signature]

Designation Controller of Technical Services

NOTE.—This is not a separate planning permission, but must be read in conjunction with any conditions attached to the outline planning permission.

26/49

DLA TOWN PLANNING LTD

Appendix 4

STATUTORY DECLARATION

I, Brian Dunlop of Fairgreen Road, Baldwins Gate ST5 5LS, do solemnly and sincerely declare as follows:

I was the CEO of Peerglow Group from 1972 to 1992 and was responsible for the redevelopment of the Greyhound Association (GRA) headquarters in Northaw. Therefore, I am familiar with the demolition of Hook Cottages secured by Outline Permission S6/1974/0205/.

I confirm that we fully demolished Hook Cottages in early 1975, which were to be replaced by a terrace of three, three-bedroom dwellings. Graham Wright (Sales Director) handled the sales of properties on the site and the day to day running was undertaken by Andrew Elliot (Construction Manager), who was responsible for the demolition and clearing of Hook Cottages in 1975. However, the planned construction of the three dwellings was put on hold as I was in negotiations to acquire the balance of GRA's land.

The remaining land was subsequently acquired, and the site was comprehensively redeveloped following permission S6/1987/0171/FP (31/10/1987). The construction of the terraced dwellings did not go ahead because the parent company of Peerglow Homes, the Mowat Group, went into administration in 1992 which meant I had no available funds to continue with further projects on the site.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declared by the above Mr Brian Dunlop

Signed

At Myers & Co, Staffordshire

This 14th day of February 2019

Before me

TIM NEWSOME

A Solicitor empowered to administer oaths

Tim Newsome
Myers & Co, Solicitors
33/43 Price St, Burslem
Stoke on Trent ST6 4EN

Appendix 5

STATUTORY DECLARATION

I, Mr Graham Wright of 36 Stonehills, Welwyn Garden City, Herts AL8 6PD do solemnly and sincerely declare as follows:

I was employed by Peerglow Group between 1975 and 1992 as the Sales Director, who were responsible for the redevelopment of the Greyhound Racing Association (GRA) headquarters in Northaw. Therefore, I am familiar with the demolition of Hook Cottages on Hook Lane secured by outline permission S6/1974/0205 on 28th March 1974.

I confirm that Hook Cottages were fully demolished under the supervision of Andrew Elliot (Construction Manager) in early 1975, which were to be replaced by a terrace of three, three-bedroom dwellings. Hook Cottages were demolished and cleared of rubble in 1975, leaving only the drainage. However, the planned construction of the three dwellings was put on hold as Brian Dunlop (CEO of the Peerglow Group) was in negotiations to acquire the balance of GRA's land.

The remaining land was subsequently acquired, and the site was comprehensively redeveloped following permission S6/1987/0171/FP (31/10/1987). The construction of the terraced dwellings did not go ahead because the parent company of Peerglow, the Mowat Group, went into administration in September 1992 meaning the business had no available funds.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declared by the above Mr Graham Wright

Signed.....

At.....

This.....day of.....2019

Before me.....

A Solicitor empowered to administer oaths

MICHAEL SCUTT - SOLICITOR
CRANE & STAPLES
LONGCROFT HOUSE
FRETHERNE ROAD
WELWYN GARDEN CITY
HERTS AL8 6TU

Appendix 6

STATUTORY DECLARATION

I, Mr Andrew Elliott of Hingston Cottage, South Milton, Kingsbridge, Devon TQ7 3JG, do solemnly and sincerely declare as follows:

I was employed by Peerglow Group between 1974 and 1993 as the Construction Manager, who were responsible for the redevelopment of the Greyhound Racing Association (GRA) headquarters in Northaw. Therefore, I am familiar with the demolition of Hook Cottages on Hook Lane secured by Outline Permission S6/1974/0205/ on 28th March 1974.

I confirm that we fully demolished Hook Cottages in early 1975, which were to be replaced by a terrace of three, three-bedroom dwellings. We completed the demolition and cleared the rubble in 1975, leaving only the drainage. However, the planned construction of the three dwellings was put on hold as Brian Dunlop (CEO of the Peerglow Group) was in negotiations to acquire the balance of GRA's land.

The remaining land was subsequently acquired, and the site was comprehensively redeveloped following permission S6/1987/0171/FP (31/10/1987). The construction of the terraced dwellings did not go ahead because the parent company of Peerglow, the Mowat Group, went into administration in September 1992 meaning the business had no available funds.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declared by the above Mr Andrew Elliott

Signed A Elliott

At 20 Fore Street, Kingsbridge Devon

This 15th day of February 2019

Before me... Nicola Kovacic - Chartered Legal Executive

A ~~Solicitor empowered to administer oaths~~ Commissioner for Oaths.

BARTONS
SOLICITORS
20 FORE STREET
KINGSBRIDGE, DEVON
TQ7 1NZ

Appendix 7

Extract from Planning Law and Practice by James Cameron Blackwell

Routledge Cavendish 2005

14.10 **ABANDONMENT OF PLANNING PERMISSION**

The abandonment of a planning permission should not be confused with the abandonment of use of land. In White v Secretary of State and Congleton BC (1989) JPL 692; 58P & CR 281, the Court of Appeal held that the use of land which was in existence on 1 July 1948 was capable of being abandoned. In such a case, the resumption of the use would constitute development, and planning permission would be required (see, also, Hartley v Minister Housing and Local Government (1970) 1QB413; (1969) 3 All ER 1658; 2WLR1).

In a situation where a planning permission has been activated, and the lpa has taken no action to serve a completion notice, can that permission ever be regarded as having been abandoned? This issue was finally resolved in Pioneer Aggregates (UK) Ltd v Secretary of State (see para 14.3, above), in which the House of Lords arrived at a unanimous decision that there is no principle in planning law that a valid planning permission, capable of being implemented according to its original terms, can be abandoned. The important basis of this judgment are contained in Lord Scarman's comments, which made it clear that, on the question of abandonment, he agreed with both courts below that there was no such general rule in planning law. In certain exceptional circumstances not covered by legislation, the courts have held that a landowner, by developing his land, can play an important part on bringing to an end, or making incapable of implementation, a valid planning permission.

He went on to comment that:

… planning control is a creature of statute. It is a field of law in which the court should not introduce principles or rules derived from private law unless it be expressly authorised by Parliament or necessary in order to give effect to the purpose of the legislation. Parliament has provided a comprehensive code of planning control currently found in s 75(1) of the Town and Country Planning Act.

The judgment reinforced the principle that, unless the lpa grants a temporary, time-limited consent or takes action to revoke or modify a previous planning permission, the act of granting permission to develop land enures for the benefit of the land and persons having an interest in the land.

Appendix 8

enhanced value that development permission attracts. Section [56] seeks some earnest of intention to develop. The specified operations are not necessarily very extensive. Very little need be done to satisfy the section. That which is done, however, must genuinely be done for the purpose of carrying out the development. Section [56] is a benevolent section which aims at avoiding hardship to a developer who is genuinely undertaking the development."

A similar approach is reflected in the acceptance by the courts that the works carried out are not de minimis merely because their cost is small by comparison with the overall cost of the projected development (see, *e.g. United Refineries Ltd v Essex County Council* [1978] J.P.L. 110, though decided on an express pre-1969 condition and not under these provisions, and concerned with the *commencement* of development under s.72(3) rather than when development is "begun" under this section). Beyond the question of *de minimis*, however, the focus of the section is not at all on the quantum of the work undertaken, but whether it is related to the planning permission involved: *Thayer v Secretary of State for the Environment* [1992] J.P.L. 264, where the Court of Appeal held that an inspector had been wrong to find that the opening of a 12 foot gap in a hedge and limited ground preparation did not constitute a specified operation in relation to a planning permission for the erection of a house and garage. By contrast, the court in *R. (Connaught Quarries Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] 4 P.L.R. 18 upheld an inspector's finding that certain works which "solely comprised the scooping out of a section of hedge in the rough position of the new access" were de minimis, and did not therefore involve the beginning of development.

Although the 1990 Act defines the operations as "material" operations rather than "specified operations" as in the 1971 Act, there is no mention of the change in the Law Commission's Report on the consolidation legislation; and the amendment cannot be taken as implying that the operations might need to be more substantial than before.

"Colourable" implementation

P56.10 The courts at one time insisted that the works must not be carried out simply to keep a permission alive. They must "genuinely be done for the purpose of carrying out the development" *per* Eveleigh L.J. in *Malvern Hills*; and Watkins L.J. was satisfied in that case that the pegging out of the line of the road was "an unequivocal manifestation of the intention of the builders to begin development within the permitted time and, weather permitting, to proceed with it from that time forward until development was complete." In *Pedgrift v Oxfordshire CC* (December 15, 1989; unreported) the court held that certain works did not constitute the beginning of development because they had not been executed *bona fide* and could be described as colourable. In *Hillingdon LBC v Secretary of State for the Environment* [1990] J.P.L. 575 the court accepted that this principle governed the interpretation of the section, and that the developer's intention was relevant; but held that even where the developer was still not committed to going ahead, and the development for which the permission had been granted was not his preferred option for the site, nonetheless the works that he had carried out were not colourable. The court upheld the inspector's negative formulation of the question, that he was unable to say that at the time that the works were executed the development would not be built, and therefore that the material operation could not have been comprised in the development.

But even in that restricted form the "colourability" doctrine introduces a gloss on the words of the statute, and by placing importance on the state of

mind of whoever begins the development, creates practical difficulties, particularly when the land has since changed hands. The security of the purchaser's permission may depend upon nothing more than the state of mind of a previous owner at the time that the material operations were carried out.

In a series of High Court decisions, the doctrine started to come under attack. Continued support for the "colourability" doctrine was to be found in *R. v Arfon BC Ex p. Walton Communications Group Ltd* [1997] J.P.L. 237 and *Agecrest v Gwynedd CC* [1998] J.P.L. 325. But its purpose was questioned in *South Gloucestershire CC v Secretary of State for the Environment* [1999] J.P.L. B99 and *Tesco Stores Ltd v North Norfolk DC* [1998] P.L.C.R. 183 (October 8, 1997, HH Judge Langan Q.C. upheld by the Court of Appeal on other grounds, March 11, 1999).

The English authorities were reviewed by the Inner House of the Scots Court of Session (Lords Coulsfield, Milligan and Allanbridge) in *East Dunbartonshire Council v Secretary of State for Scotland* [1999] 1 P.L.R. 53. Not bound by any Scottish authority directly on the point, the court rejected the line of English authority. The court accepted that the work must be done pursuant to the planning permission in question, and must be part of the development covered by. But it rejected the submission that the specified operations must be undertaken with some particular intention. Such an approach would be at odds with the insistence by Lord Scarman in *Pioneer Aggregates (U.K.) Ltd v Secretary of State for the Environment* [1985] A.C. 132 that the courts should not seek to elaborate or introduce additional requirements into the statutory planning code. The court preferred to apply an objective approach and to consider, first, whether what has been done has been done in accordance with the relevant planning permission. Secondly, the court should consider whether it was material in the sense of not being *de minimis*. On that approach, the question would be one of fact and degree.

The *Dunbartonshire* case was then followed in England *Riordan Communications Ltd v South Bucks District Council* [2000] 1 P.L.R. 53 (David Vaughan Q.C. sitting as Deputy Judge, December 2, 1999) in rejecting the subjective test of intention and holding that the objective test was satisfied by the court first considering whether the work had been done in accordance with the relevant planning permission, and secondly whether it was more than *de minimis*.

The High Court in *R (Ashfield) v National Assembly for Wales* [2003] EWHC 3309 (Admin); Pitchford J; December 18, 2003, held, following *East Dunbartonshire Council v Secretary of State for Scotland* [1999] 1 P.L.R. 53, and citing from the Encyclopedia at para.P56.10, that the appropriate test under s.56 is objective and that the intention of the person carrying out the operations is irrelevant.

Curiously, the Court of Appeal decision in *Staffordshire CC v Riley* [2001] EWCA 257 appears to have been overlooked in these latter decisions. At para.26 of his judgment Pill L.J. (with whom the other judges agreed) decisively rejected the subjective test and expressly approved the *East Dunbartonshire* decision.

"Comprised in the development"

P56.11 The High Court in *Commercial Land Ltd/Imperial Resources SA v Secretary of State for Transport, Local Government and the Regions* [2003] J.P.L. 358 (Admin) (Ouseley J; May 29, 2002) held that the question of whether certain material operations were "comprised in the development" could not necessarily be answered simply by comparing them with the approved plans. Differences between the approved plans and the operations relied on need not be fatal to the capability of the operations to be