

Name of Applicant	Proposal	Expiry Date	Plan Ref.
Mr Peter Whittaker	<p>Lawful Development Certificate sought to confirm development has commenced in accordance with condition 1 of planning permission ref. 21/01754/FUL dated 11th February 2022; Change of use of farmhouse and attached barns to form holiday let accommodation with reinstatement roof works to the attached barns; change of use of detached barn to create dwelling house with single storey extension; creation of new access track and parking area to farmhouse and remediation and reinstatement works to dovecot and so would be lawful for planning purposes.</p> <p>Stoney Lane Farm, Stoney Lane, Alvechurch, Worcestershire, B60 1LZ</p>		24/01062/CPE

**This application is being considered by Planning Committee rather than being determined under delegated powers as the applicant is a serving District Councillor.**

**RECOMMENDATION: APPROVAL**

**Consultations**

**North Worcestershire Building Control**

Confirm that the information submitted relating to building control is accurate.

**Tutnall And Cobley Parish Council**

Tutnall and Cobley Parish Council support this application.

**Publicity**

None required

**Relevant Policies**

Planning policies contained in the Bromsgrove Local Plan and other material considerations such as impact on residential and visual amenity are not applicable in this case as the assessment of whether to grant a Certificate of Lawfulness is dependent on the facts of the case and relevant planning law.

**Relevant Planning History**

21/01754/FUL	<p>Change of use of farmhouse and attached barns to form holiday let accommodation with reinstatement roof</p>	Approved	11.02.2022
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works to the attached barns; change of use of detached barn to create dwelling house with single storey extension; creation of new access track and parking area to farmhouse and remediation and reinstatement works to dovecot

21/01755/LBC	Change of use of farmhouse and attached barns to form holiday let accommodation with reinstatement roof works to the attached barns; change of use of detached barn to create dwelling house with single storey extension; creation of new access track and parking area to farmhouse and remediation and reinstatement works to dovecot	Approved	11.02.2022
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There is extensive planning history related to the agricultural use and associated buildings at Stoney Lane Farm, but these are not reported here given this history is not relevant to the application under consideration.

### **Assessment of Proposal**

#### **The site and its surroundings**

Stoney Lane Farm consists of a group of buildings comprising a Grade II listed Georgian farmhouse, connected to a 18th century timber-framed barn, a single storey range of 19th century brick barns and a separate brick dovecote. Gardens associated with the farmhouse extend to the west and south, demarcated by a stone ha-ha on the west; these lead onto to agricultural land to the west and south mainly laid to grazing pasture. A courtyard to the east of the house is formed with a timber-framed range on the roadside and brick barns to the south. The dwelling was substantially increased in size at the end of the 19th Century by a two-storey brick service wing on its north-east side.

#### **Proposal**

A proposal relates to an application for a Lawful Development Certificate for an Existing Use or Operation or Activity (CLEUD) to confirm development has commenced in accordance with condition 1 of planning permission 21/01754/FUL.

Members should note that this application is not a planning application.

In an application relating to a Lawful Development Certificate (LDC) the onus of proving the relevant facts rests with the applicant and the standard of evidence is the balance of probabilities. The applicant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the applicant's version of events less than probable, the applicants evidence alone may be

sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.

To implement a planning permission the applicant 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 Town and Country Planning Act 1990 (the Act))

Documents submitted with this application include the following:

- Planning application forms and site location plan
- Confirmation of pre commencement discharge of condition (Bromsgrove DC dated 4<sup>th</sup> July 2023).
- Approved drainage plan (23-11-10A SURFACE WATER DRAINAGE)
- North Worcestershire Building Control acknowledgement letter dated 25<sup>th</sup> July 2023
- Photographs of drainage works (July 2023)
- Confirmation from North Worcestershire Building Control that an officer visited the and viewed the drainage works on 11<sup>th</sup> August 2023 (dated 26<sup>th</sup> June 2024)

Full planning permission was granted on 11 February 2022 under reference 21/01754/FUL for Change of use of farmhouse and attached barns to form holiday let accommodation with reinstatement roof works to the attached barns; change of use of detached barn to create dwelling house with single storey extension; creation of new access track and parking area to farmhouse and remediation and reinstatement works to dovecot, subject to conditions.

The first condition is a time limit, stating that the development shall be begun before the expiration of 3 years. The pre-commencement conditions relating to materials (4 and 6) and drainage (18 and 19) were discharged on 4 July 2023. There is no dispute that the applicant has provided sufficient evidence that initial works related to the installation of storm water drainage in accordance with the drainage design site on the application site in August 2023, constituting operational development. Consequently, there is no dispute that the works described were carried out within 3 years of the date of the planning permission.

What constitutes a start of development is set out in Section 56 of the Act and for the purposes of implementing a planning permission the relevant date is the date on which a "material operation" is carried out. According to Section 56(4) in sub-section 2, a "material operation" includes:

- (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)

Therefore, in this case the key question is whether the works carried out in August 2023 constitute a "material operation" under (c).

I note that North Worcestershire Building Control was responsible for Building regulations matters (under Building Control reference 23/1213/MULFP), as part of this site, this has

been collaborated to ensure that this information is correct. However, there is nothing in law that requires something to benefit from building control approval to constitute a “material operation” for the purposes of the Act. Indeed, they are entirely separate processes.

Case Law<sup>1</sup> has established that the threshold for what is deemed to be material operations is low, where the marking out of a line and the width of a road with pegs amounted to “material operations” within s56(4)(d). Furthermore, the case of Spackman<sup>2</sup> concerned whether or not material operations were carried out for the construction of a residential dwellinghouse. In that case 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. It was accepted that the soakaway was approximately 35 feet from the nearest soakaway shown on the approved plans, but nevertheless the court held that underground drainage works that were no longer visible without excavation may constitute the commencement of development even where the foundations or trenches themselves referred to in s56(4) have not yet been created.

The applicant has submitted photographs showing the installation of storm drainage and inspection chamber to plot 4, the location of the works is clear from the photographs which show the relation to other buildings and features in the vicinity. This is in line with the approved drainage plan (23-11-10A) approved under conditions 18 and 19. This has been collaborated by Building Control records.

It is not considered that these works would be regarded as *de minimis*. The threshold for works is low and in this case the works are clearly undertaken using a mechanical digger and the works are more than 15 metres in length.

As such it is my view that the evidence submitted demonstrates that the works that have been carried out; namely the material operation of digging of a trench, laying a pipe and installation of an inspection chamber fall within what constitutes a start of development as set out in the Act. Therefore, the development in question has lawfully commenced.

Taking into consideration the approval of the pre-commencement conditions applicable to the development, and the works that have been carried out on site, namely the material operation of digging of a trench, laying a pipe and installation of an inspection chamber, I am satisfied that the works carried out constitute the start development as set out in section 56(4) of the TCPA 1990 and as a result the development has lawfully commenced in accordance with condition 1 of 21/01754/FUL.

## **RECOMMENDATION: APPROVAL**

**Case Officer:** Mr Paul Lester Tel: 01527 881323  
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<sup>1</sup> Malvern Hills DC v SSE & Barnes and Co [1982] JPL 439

<sup>2</sup> Spackman v SSE and Another [1977] 33 P. & C.R. 430

