

## CUMBERLAND COUNCIL DELEGATED PLANNING DECISION

1.	<b>Reference No:</b>	4/24/2417/0E1
2.	<b>Proposed Development:</b>	LAWFUL DEVELOPMENT CERTIFICATE TO CONFIRM THAT A MATERIAL COMMENCEMENT HAS BEEN MADE TO PLANNING PERMISSION 4/19/2125/001 - OUTLINE APPLICATION WITH ALL MATTERS RESERVED FOR A SINGLE DWELLING
3.	<b>Location:</b>	LAND ADJACENT TO 6 ROSE GARDENS, GILGARRAN
4.	<b>Parish:</b>	Distington
5.	<b>Constraints:</b>	ASC;Adverts - ASC;Adverts, Coal - Standing Advice - Data Subject To Change, Key Species - Bounds of Sensitive Area for Hen Harriers, Outer Consultation Zone - Cycliffe 3KM
6.	<b>Publicity Representations &amp;Policy</b>	Neighbour Notification Letter: NO  Site Notice: NO  Press Notice: NO  Consultation Responses: See report  Relevant Planning Policies: See report
7.	<b>Report:</b>  <b>SITE AND LOCATION</b>  This application relates to a plot of land on the southern edge of Gilgarran which is adjacent to the dwelling at 6 Rose Gardens. It is currently vacant land which was overgrown and unused.  The site is bound to the south and east by a high stone wall with the residential property – 6 Rose Gardens to the north, the curtilage of 2 Freer Bank Villas and the adopted Highway to	

the east and Brandlehow and its associated land to the west. Prior to the clearance of the site, there were some trees and shrubs present.

The land has been subject to an outline approval for the erection of a single dwelling which was approved in 2019 (application reference 4/19/2125/001 relates). A subsequently application for the approval of reserved matters was granted in March 2023 (application 4/22/2393/0R1 relates).

### **PROPOSAL**

This application seeks a lawful development certificate to confirm that a lawful start has been made in order to secure the planning permission in perpetuity.

The works undertaken involve the clearance of the site, the marking out of the dwelling, the laying of some hardcore and the digging of part of the foundations. Evidence in the form of a written description, site photographs and a receipt from the contractor have been submitted to verify the works carried out.

### **CONSULTATION RESPONSES**

There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the context of a specific application. This normally only relates to Lawful Use applications for existing uses. In this case the application relates to existing development and seeks to establish that the works undertaken so far are considered to constitute a lawful start. In such cases views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

### **RELEVANT PLANNING POLICY/LEGISLATION**

Town and Country Planning Act 1990

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Planning Practice Guidance

### **LEGAL CONSIDERATIONS**

Section 191 of the TCP Act 1990 allows amongst other things, an application to be made to confirm that any operations which have been carried out in, on, over or under land are lawful.



## Cumberland Council

In this instance it is claimed that the works which have been undertaken fall within the definition of development and are therefore sufficient to constitute a commencement of development.

Section 56 of the Town and Country Planning Act 1990 determines that development of land shall be taken to be initiated when:

- (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).

Section 56, part 4 defines a material operation as:

- (a) any work of construction in the course of the erection of a building;
- (aa) any work of demolition of a building;
- (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);
- (d) any operation in the course of laying out or constructing a road or part of a road;
- (e) any change in the use of any land which constitutes material development.

### **ASSESSMENT**

Based on the information submitted I am satisfied that the foundations have been laid in accordance with the approved plans and constitutes a material operation as set out in Section 56, Part 4(c) of the Town and Country Planning Act 1990. These works are sufficient to comprise a material commencement of development.

These works were commenced within the timescale specified on the decision notice and the pre commencement conditions have previously been discharged.

On this basis it is appropriate for a lawful development certificate to be granted.

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| 8. | <p><b>Recommendation:</b></p> <p>Approval of Certificate of Lawfulness</p> |
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<b>Case Officer:</b> Sarah Papaleo	<b>Date :</b> 20/02/2025
<b>Authorising Officer:</b> N.J. Hayhurst	<b>Date :</b> 26/02/2025
<b>Dedicated responses to:-</b> N/A	