
Appeal Decisions

Site visit made on 15 September 2020

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03 November 2020

Appeal A: APP/K0235/X/20/3250045

Church Lane, Upper Dean, Huntingdon, PE28 0NB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr C Alder against the decision of Bedford Borough Council.
- The application Ref. 19/02549/LDE, dated 19 November 2019, was refused by notice dated 21 February 2020.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is a gravel surfaced ancillary residential (Church Cottage) parking area including vehicle access onto Church Lane.

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Appeal B: APP/K0235/X/20/3250067

Church Lane, Upper Dean, Huntingdon, PE28 0NB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr C Alder against the decision of Bedford Borough Council.
- The application Ref. 19/02561/LDE, dated 21 November 2019, was refused by notice dated 2 March 2020.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is a grass cutting machinery store including concrete base.

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision

Formal Decisions

Appeal A:

1. The appeal is allowed and attached to this decision is a LDC describing the existing operations which are found to be lawful.

Appeal B:

2. The appeal is allowed and attached to this decision is a LDC describing the existing operations which are found to be lawful.

Preliminary Matters

3. The existing gravel parking area and access in Appeal A, and the existing machinery store and concrete base in Appeal B, are located on land off Church Lane as indicated by the red outlines on the location plans submitted with each application. Both of the developments in A and B are within a larger area of land in the appellant's ownership which adjoins his residential property. Since the two appeal developments are of similar factual and legal considerations, I have dealt with both appeals together.
4. It is for the appellant to demonstrate, on the balance of probabilities, that the appeal developments are lawful. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous. Matters such as planning policies and the effect of the proposed developments on the character and appearance of the area are not relevant to the determination of these appeals.

Appeals A and B

Reasons

5. Section 191(1)(b) of the Act enables any person to apply for a LDC to the effect that any operations which have been carried out in, or over or under land are lawful. S191(2)(a) and (b) state that uses and operations are lawful at any time if –
 - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
6. It is clear from the completed information in the application forms that the applications were made in respect of existing building operations, and on the grounds that the operations were substantially completed more than 4 years before the date of each application¹, such that they were immune from enforcement action by virtue of expiry of the time limit at s171B(1). The appellant's case is that the gravel parking area and access in Appeal A, and the concrete base and machinery store in Appeal B, were substantially completed by 27 March 2015 and 12 November 2015 respectively (hence more than 4 years before the date of the applications).
7. Supporting evidence submitted with the applications include scale drawings and photographs of the developments, together with documentary evidence including bank statements showing transactions, quotations and invoices for completed works; all dated more than 4 years prior to the date of the applications. His evidence overall is clear and unambiguous and is not contradicted by the Council. I find no reason to doubt its veracity. I therefore find that the requirement at s191(2)(a) is satisfied.

¹ The dates of the applications to the Council for appeals A and B are 19 and 21 November 2019 respectively

8. Amplifying the refusal reasons for both applications, the Council argue that the operational development in Appeals A and B appear to them to be an integral part of an apparent unauthorised change of use of the wider parcel of land in which they sit, and hence the relevant period for immunity is 10 years rather than 4 years. In support of their assertion they refer to the appellant's refused s73A planning application² for a change of use of the wider land which included retention of the subject building operations.
9. However, the Council has unfortunately misdirected itself on this point. Whether or not there has been a material change of use of the wider land is not a matter before me since the LDC applications that were submitted, now appeals, relate solely to the building operations carried out and whether they were lawful at the date of the applications, having regard to sections 191(1)(b) and s191(2)(a) and (b) of the Act. In this regard, the Council has not as yet issued an enforcement notice, of any type. Consequently, at the date of the applications the operational development subject of these appeals did not "constitute a contravention of any of the requirements of an enforcement notice then is in force", and thus the qualifying criterion for a LDC at s191(2)(b) for the operations is also satisfied.
10. The caselaw³ the Council refers to might have been relevant had an enforcement notice alleging a material change of use been issued prior to the date of the applications, but for the reasons set out above they are not relevant to the circumstances in these appeals.
11. I therefore find that the requirements of s191(2)(a) and (b) in respect of the existing building operations described in the applications were lawful at the date the applications were made. For the sake of clarity, I would emphasise that my finding of lawfulness extends only to the building operations carried out on the land, and not to any use of the land.

Conclusion

12. For the reasons given above I conclude on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of (Appeal A) a gravel surfaced ancillary residential (Church Cottage) parking area including vehicle access onto Church Lane, and (Appeal B) a grass cutting machinery store including concrete base, at land off Church Lane, Upper Dean, Huntingdon, PE28 0NB were not well-founded and that the appeals should succeed. I exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Thomas Shields

INSPECTOR

² Ref: 19/00201/S73A – refused 18 October 2019

³ *Somak Travel* (1988) 55 P. & C.R. 250, *Murfitt* (1980) 40 P. & C. R. 254, and *Kestrel Hydro v Secretary of State for Communities and Local Government* [2016] EWCA Civ 784

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 19 November 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could have been taken in respect of the operations because the time for enforcement action had expired and they did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

Thomas Shields

INSPECTOR

Date 03 November 2020

Reference: APP/K0235/X/20/3250045

First Schedule

Gravel surfaced ancillary residential (Church Cottage) parking area including vehicle access onto Church Lane.

Second Schedule

Land at Church Lane, Upper Dean, Huntingdon, PE28 0NB

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

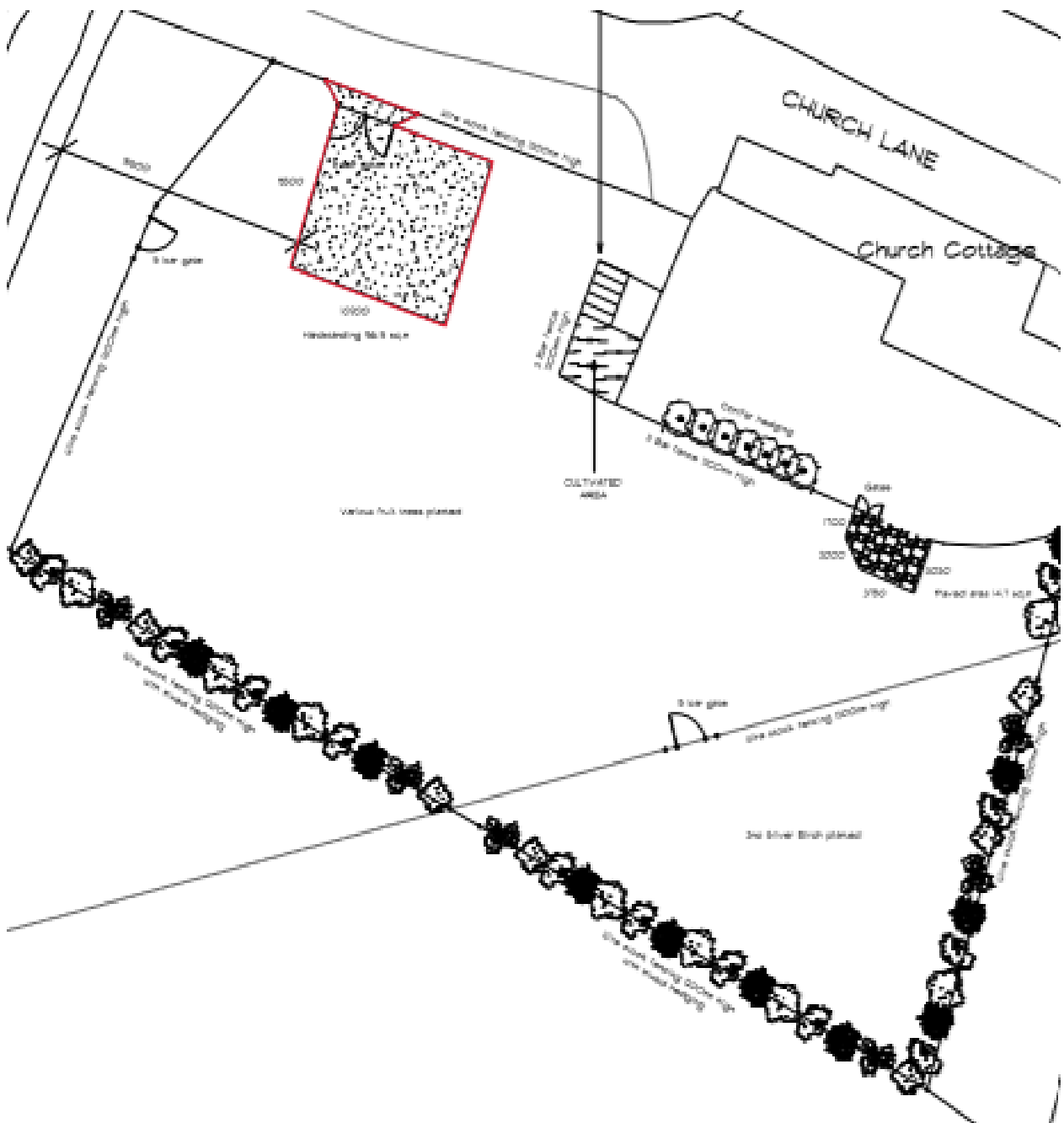
This is the plan referred to in the Lawful Development Certificate dated: 03 November 2020

by Thomas Shields DipURP MA MRTPI

Land at: Church Lane, Upper Dean, Huntingdon, PE28 0NB

Reference: APP/K0235/X/20/3250045

DO NOT SCALE



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 21 November 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could have been taken in respect of the operations because the time for enforcement action had expired and they did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

Thomas Shields

INSPECTOR

Date 03 November 2020

Reference: APP/K0235/X/20/3250067

First Schedule

Grass cutting machinery store including concrete base.

Second Schedule

Land at Church Lane, Upper Dean, Huntingdon, PE28 0NB

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 03 November 2020

by Thomas Shields DipURP MA MRTPI

Land at: Church Lane, Upper Dean, Huntingdon, PE28 0NB

Reference: APP/K0235/X/20/3250067

DO NOT SCALE

