



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 8 July 2021

Appeal Ref: APP/C1950/X/21/3269053

The Stables, Station Road, Welham Green, Hatfield AL9 7SE

- 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 Numan Ibrahim against the decision of Welwyn Hatfield Borough Council.
 - The application Ref: 6/2020/3368/LAWP, dated 10 December 2020, was refused by notice dated 11 February 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of fields for the take-off and landing private light aircraft.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Main Issue

2. Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission for the use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of (a) the holding of a market; (b) motor car and motorcycle racing including trials of speed, and practising for these activities, and the provision on the land of any moveable structure for the purposes of the permitted use. There are certain limitations to this grant of planning permission. The Council has not raised that any of those are contravened in this case. I have no reasons to disagree. Therefore, the main issue is whether the proposed use would be lawful because it falls within the scope of the planning permission granted by the GPDO.

Preliminary Matters

3. Because planning permission has already been granted, I am not able to take account of concerns raised by some neighbours about, for example, potential noise impact of the aircraft on their amenity. Also, I cannot judge the scheme against any other matters of planning merit such as that the site is in the Green Belt. Furthermore, any safety concerns that there might be due to the

proximity of the aircraft to the railway line, telecommunications equipment or nearby stabling of horses are not matters for my consideration.

4. The Council refused the LDC application due to concerns that the plans submitted lacked sufficient clarity and accuracy to properly determine the lawfulness of the proposal to use the land for the take-off and landing of aircraft. Nevertheless, a plan has been supplied showing three fields across which in a north-south direction a red line has been drawn which indicates the position of where it is intended that planes would take off and land. I see that this is sufficiently clear to show what has been applied for.

Reasons

5. The granting of planning permission for temporary uses of land by the GPDO is not a single permission that is granted afresh each calendar year. Its effect is to allow up to 28, as in this case, changes of use on each of the days permitted per year. Thus, there is a grant of as many planning permissions as there are changes of use up to that level. With this in mind the Courts have accepted that the carrying out of operations might in some cases be relevant, but only where they made it difficult or impossible for the site to revert realistically to its previous normal use, such as agriculture, in between the occasions when the land was used for the new use. Unless the physical changes were to the extent that there would be a material change in use from the previous use, which had then to all intents and purposes ceased, they were otherwise irrelevant.
6. The Council has pointed out that the red line appears to cut across field boundaries and it also dissects a drainage channel and there is no information about how these physical barriers would be overcome. The appellant states that there would be no physical changes to the land, although I have noted that according to the appellant some hedgerow has been replanted.
7. It may or may not be the case that a hedgerow or fence might need removing or that the drainage channel presents a problem across one part of the runway's approximately 355m length. However, given what is set out above, such works, if needed, would not realistically prevent reversion of the land back to its normal use after each temporary use. That is not to say hedgerow or tree removal may not be subject to other controls, or that the local planning authority may not be able to control physical alterations to land-form, for example if they were considered to constitute engineering operations. Nonetheless, for the purposes of this determination, there is nothing as a matter of fact and degree to show that the proposal would not be development permitted by the GPDO.
8. Consequently, under s191(2)(a) of the 1990 Act, the proposal would be lawful.

Conclusion

9. For the reasons given above I conclude, on the evidence now available, that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Gareth Symons

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 10 December 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown by the red line of the proposed taking off and landing strip on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposal would have planning permission granted by Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 2015. Consequently, it would be lawful under s191(2)(a) of the Town and Country Planning Act 1990 (as amended).

Signed

Gareth Symons

Inspector

Date 8 July 2021

Reference: APP/C1950/X/21/3269053

First Schedule

Use of fields for the take-off and landing private light aircraft.

Second Schedule

The Stables, Station Road, Welham Green, Hatfield AL9 7SE

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /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 use /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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 July 2021

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Land at: The Stables, Station Road, Welham Green, Hatfield AL9 7SE

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Scale: Do not scale.

