



Appeal Decisions

Site visit made on 14 September 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10/11/2021

Appeal A: APP/R3650/X/20/3260604

South Fork, Wrotham Hill, Dunsfold, Godalming GU8 4PA

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr David Stedman against the decision of Waverley Borough Council.
- The application (Ref. WA/2020/1026) is dated 29 June 2020.
- The application was made under section 192(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 the proposed alteration to the existing building comprising internal doors and positioning of new windows.

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

Appeal B: APP/R3650/X/20/3265567

South Fork, Wrotham Hill, Dunsfold, Godalming GU8 4PA

- 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 David Stedman against Waverley Borough Council.
- The application Ref WA/2020/1656, dated 15 October 2020, was refused by notice dated 10 December 2020.
- The application was made under section 192(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 the proposed alteration to the existing building comprising internal doors and positioning of new windows.

Summary of Decision: Appeal B is allowed in part, and a lawful development certificate is issued in the terms set out below in the Formal Decision.

Applications for costs

1. Applications for costs were made by Mr David Stedman against Waverley Borough Council. These applications will be the subject of a separate Decision.

Preliminary matters

2. S195(1)(a) of the 1990 Act¹ makes provision for the applicant to appeal where an application is refused (Appeal B) and s195(1)(b) makes provision for the applicant to appeal where the authority fail to give notice of their decision within the prescribed time (Appeal A). S195(5) confirms, in relation to an

¹ Town and Country Planning Act 1990 as amended

appeal in a case within s195(1)(b) *"it shall be assumed that the authority decided to refuse the application in question"*.

3. While Appeal A and Appeal B are made under different sections of the 1990 Act, they relate to the same proposed scheme of works. The proposed works are shown on drawing numbers: NA/20/01, NA/20/02, NA/20/03 and NA/20/04, copies of which accompany both appeals.
4. Drawing number: HS/16/0 purports to provide details of the existing plans and elevations of the building. The elevations have the appearance of an agricultural store/stable block while the floor plan shows the various sections of the building being put to a variety of activities normally associated with residential use. I saw that the building is being used for residential purposes and a further LDC appeal² is being considered for that use.
5. On 26 February 2021 the Council issued a LDC³ for the proposed internal alterations, which includes the provision of the 3 internal doors shown on drawing number: NA/20/01. On 4 August 2021 the Council issued a LDC⁴ for the alteration of an existing building to provide a new window, which is the window in the rear wall of the lounge/dining area shown on drawing number: NA/20/05. Having received these LDCs, the appellant does not want to pursue the internal alterations or the window to the lounge/dining area as part of Appeals A and B.
6. I saw that the proposed works granted by those 2 LDCs had not been carried out. S195(2)(b) of the 1990 Act, in the case of a refusal in part, would allow me to modify the description of the development for which a certificate is granted. There is however no similar provision for me to modify the description of the proposed operations as set out in the appeal documentation. I will, therefore, determine the appeals based on the proposed alteration of the existing building comprising internal doors and positioning of new windows.

Reasons

7. The **main issue** is whether the Council's failure to determine whether a LDC should be issued (Appeal A) and their subsequent refusal to issue a LDC (Appeal B) are well founded. This turns on whether the appellant can show, on the balance of probability, that the proposed alterations to the existing building comprising of internal doors and positioning of new windows would be lawful. The operations would be lawful if they did not involve development or did not require planning permission. The burden of proof rests with the appellant and the evidence must be sufficiently precise and unambiguous to justify the grant of a LDC.
8. S55(1) of the 1990 Act states that development *"means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land"*. Building operations, for the purpose of the 1990 Act, includes other operations normally undertaken by a person carrying on business as a builder, amongst other things.

² APP/R3650/X/20/3253270

³ Council reference: WA/2021/0047

⁴ Council reference: WA/2021/01270

9. S55(2) provides a list of operations and uses that shall not be taken to involve development. The list set out in s55(2)(a) includes "*the carrying out for the maintenance, improvement or other alteration of any building of works which – (i) affect only the interior of a building, or (ii) do not materially affect the external appearance of the building, ...*".
10. The proposed alteration to the existing building comprising internal doors, as shown on plan number: NA/20/01, represents building works which only affect the interior of the building. The provision of internal doors does not therefore fall within the meaning of development for the purposes of s55(1) of the 1990 Act, a conclusion that the Council has confirmed by issuing a LDC in respect of application reference: WA/21/0047 and I find no reason to disagree.
11. The proposed positioning of new windows are not works affecting only the interior of the building. Their effect on the external appearance of the building therefore falls to be considered.
12. The building has a simplistic appearance, which is reflective of its original purpose as an agricultural store/stable block. The building currently has 4 door openings and 2 paired windows in its front elevation and one high-level window in its rear elevation.
13. The proposed works show 2 of the existing doors being replaced by 2 windows on the front elevation, the high-level window being replaced with a larger window and the positioning of 2 additional windows in the rear elevation. While an LDC has been granted for one additional window in the rear elevation, the further interventions in the external fabric of the building and alteration to the existing openings, when taken together, would significantly change the simplistic appearance of what was an agricultural store/stable block. These interventions would materially affect the external appearance of the building.
14. For this reason, the positioning of new windows falls within the meaning of development, having regard to s55(2)(a), for which planning permission is required.
15. The proposed works specifies two operations, one which I have found to be development and one that I have found not to be development. Section 193(4) confirms that a certificate under section 192(b) may be issued "*where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them ...*". A certificate can therefore be issued for the alteration of the existing building comprising of internal doors.

Conclusion

16. For the reasons given above, the internal works would have been lawful if begun on 29 June 2020 or on 15 October 2020. I conclude that, having regard to s195(5) of the 1990 Act, the Council's refusal to grant a LDC for the internal works was not well-founded and appeals A and B should succeed in that part only.
17. For the reasons given above, the positioning of new windows would not have been lawful if begun on 29 June 2020 or on 18 December 2020. I conclude that, having regard to s195(5) of the 1990 Act, the Council's refusal to grant a LDC for the positioning of new windows was well-founded, that part of appeals A and B should fail. I will exercise accordingly the powers transferred to me in section 195(4) of the 1990 Act as amended.

Formal Decisions

18. Appeal A is allowed insofar as it relates to internal alterations of the building and attached to this decision is a certificate of lawful development describing the extent of the operations proposed to be carried out, which are considered to be lawful.
19. Appeal A is dismissed insofar as it relates to the positioning of new windows.
20. Appeal B is allowed insofar as it relates to internal alterations of the building and attached to this decision is a certificate of lawful development describing the extent of the operations proposed to be carried out, which are considered to be lawful.
21. Appeal B is dismissed insofar as it relates to the positioning of new windows.

M Madge

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 29 June 2020 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, 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 proposed works fall within the list of works set out in section 55(2) of the 1990 Act as amended and do not constitute development requiring planning permission.

Signed

M Madge
INSPECTOR

Date

Reference: APP/R3650/X/20/3260604

First Schedule

Alteration to the existing building comprising internal doors.

Second Schedule

Land at South Fork, Wrotham Hill, Dunsfold GU8 4PA

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 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, 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 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

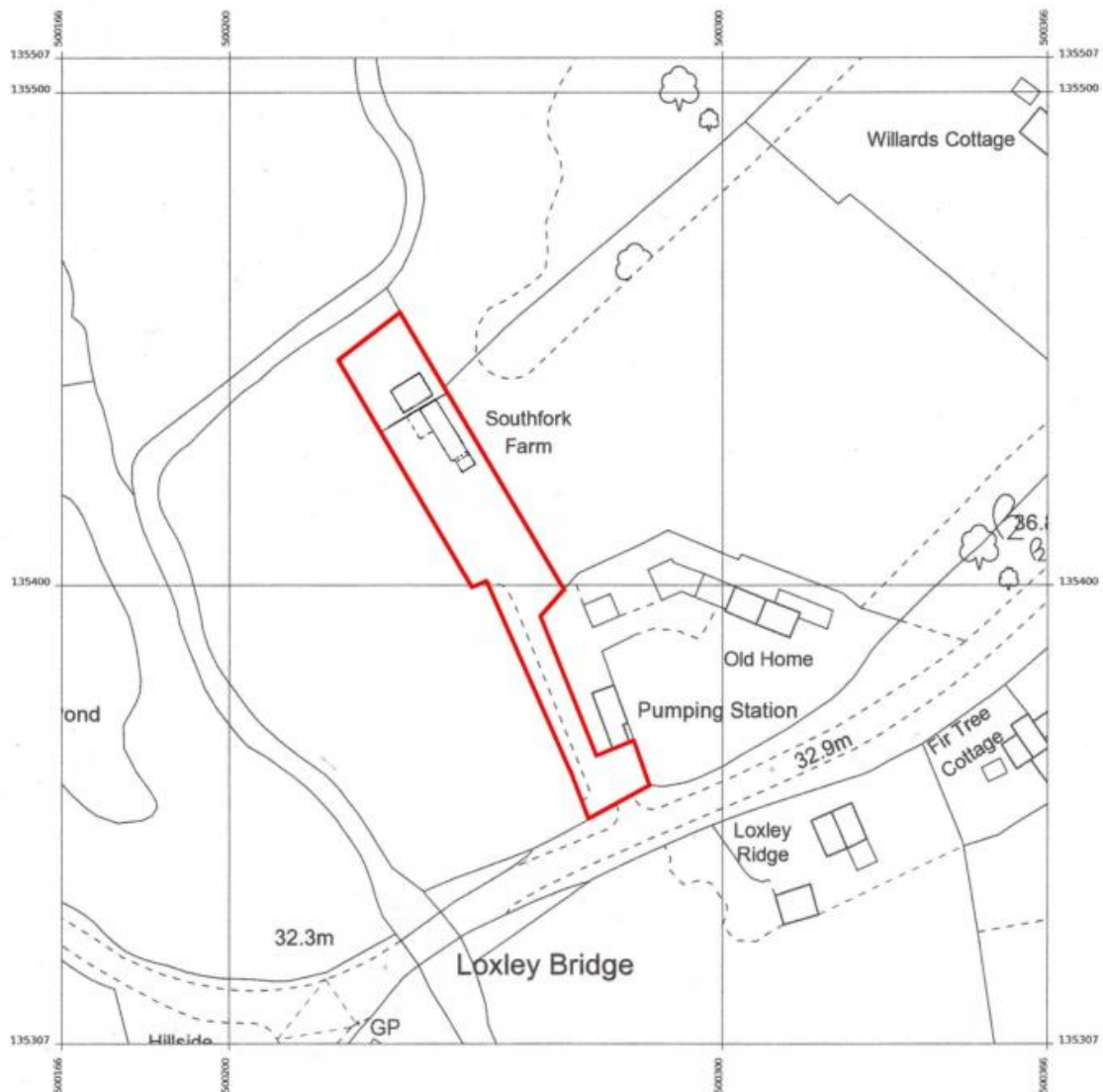
This is the plan referred to in the Lawful Development Certificate dated:

by M Madge DipTP, MA MRTPI

Land at: South Fork, Wrotham Hill, Dunsfold GU8 4PA

Reference: APP/R3650/X/20/3260604

Not to Scale



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 18 December 2020 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, 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 proposed works fall within the list of works set out in section 55(2) of the 1990 Act as amended and do not constitute development requiring planning permission.

Signed

M Madge
INSPECTOR

Date

Reference: APP/R3650/X/20/3265567

First Schedule

Alteration to the existing building comprising internal doors.

Second Schedule

Land at South Fork, Wrotham Hill, Dunsfold GU8 4PA

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 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, 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 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:

by M Madge DipTP, MA MRTPI

Land at: South Fork, Wrotham Hill, Dunsfold GU8 4PA

Reference: APP/R3650/X/20/3265567

Not to Scale

