



Appeal Decision

Site visit made on 1 February 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 07th February 2022

Appeal Ref: APP/J0405/X/21/3282321

Lovelywood, Land Adjacent to The Green, Little Horwood MK17 0PB

- 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 Karen Parker against the decision of Buckinghamshire Council.
 - The application Ref 20/04422/ACL, dated 28 December 2020, was refused by notice dated 28 July 2021.
 - The application was made under section 192(1) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is siting of a compost toilet for the use of the agricultural business.
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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 proposed development which is considered to be lawful.

Main Issue

2. The main issue in this appeal is whether or not the Council's decision to refuse the LDC was well-founded.

Reasons

3. According to the officer report on the application, the appellant seeks a LDC for the erection of a building to house a compost toilet. The proposed building would measure 1.45m deep, 1.25m wide with a height of 2.08m, constructed from sustainable waney edge timber, with a corrugated metal roof with a breathable membrane. The building would be sited on the southern side of the site, away from neighbouring properties.
4. Article 3(1) and Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) provides permitted development rights for agricultural and forestry developments.
5. It is uncontroversial that the land is not of sufficient size to benefit from agricultural permitted development rights, being less than 0.4 hectares. However, under Class E there is no size requirement in respect to land used for forestry purposes for development reasonably necessary for those purposes consisting of works for the erection of a building.

6. The GPDO does not define 'forestry'. However, as cited by the Council in an earlier decision in respect to the site¹, the Institute of Chartered Foresters provide a definition that 'forestry' shall include all aspects of the science, economics, conservation, amenity and art of establishing, cultivating, protecting, managing, harvesting and marketing of forests, woodlands, trees, timber and wood. I accept that definition as a reasonable one to apply and, while I also accept that the Council's decision in that case² did not formally make a determination of permitted development rights, I agree entirely with the reporting officer in her view that:

"The site is a small woodland which is being managed by the applicant for cultivation and management of trees. The enterprise is at a relatively early stage with new small scale tree planting. Any excess timber is used for sale for firewood and craft uses. The site does not fit with the traditional image of forestry with large scale tree production. However, it is clear that the site is being used for the small scale growing of trees and the management of the woodland. This is considered to be a forestry use in line with Class E of the GPDO."

My agreement with these comments, and overall finding on the balance of probabilities that the appeal site is used for forestry purposes, is based on the sufficiently precise and unambiguous evidence submitted by the appellant of tree planting, arborist and other work of a forestry nature (supported by the corroborating evidence of a third-party). Notwithstanding the size of the site, it is used for the purposes of forestry.

7. Further, given the activity at the site, the basic welfare facilities constituted by the modest compost toilet building are reasonably necessary in carrying out the forestry use.
8. For these reasons, the proposal is lawful under Class E.
9. The Class E condition has already been met which requires an application to be made to the Council for a determination as to whether its prior approval will be required as to the siting, design and external appearance of the building. The Council has decided that no prior approval is required³.

Conclusion

10. 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 was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

¹ 18/02324/AGN

² which concerned a prior approval application for a different building on the site necessary for forestry purposes

³ 19/04257/AGN

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 28 December 2020 the development 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 building is on land which is used for the purposes of forestry and is reasonably necessary for those purposes. It would therefore be lawful under Article 3(1) and Part 6, Class E of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Andrew Walker

Inspector

Date

Reference: APP/J0405/X/21/3282321

First Schedule

Erection of a building to house a compost toilet

Second Schedule

Land at Lovelywood, Land Adjacent to The Green, Little Horwood MK17 0PB

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:

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Scale: Do not scale

