



Appeal Decision

Site visit made on 22 October 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05th November 2024

Appeal Ref: APP/G2245/X/23/3317123

Little Postlings Farm, Five Fields Lane, Four Elms, Edenbridge TN8 6NA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Dr Mark Thomas against the decision of Sevenoaks District Council.
- The application ref: 21/02541/LDCEX, dated 30 July 2021, was refused by notice dated 10 December 2021.
- The application was made under section 191(1)(b) of the Act.
- The development for which a certificate of lawful use or development is sought is the siting of two porta-cabins (Building 15 (5.5m x 2.4m) and Building 18 (12.2m x 3m)); Siting of two lorry backs (Buildings 16 and 17 (each measuring 2.1m x 3.1m)); Siting of a permanent field shelter for horses (Building 12 (2m x 2m)); and Hardstanding concrete base and feed trough (Building 14).

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

Background

1. The application concerns what is claimed to be operational development described by the main parties as Buildings 12, 14, 15, 16, 17, and 18, as set out in the banner heading above. I shall use the same descriptions throughout this decision for ease of reference, but this does not mean that any of the above comprise 'a building' or operational development with regard to sections 55 and 336(1) of the Act.
2. The appellant has clarified that he no longer seeks an LDC in respect of Building 12 due to its dilapidated state. I shall not therefore consider the lawfulness of Building 12.
3. The Council does not dispute the lawfulness of Buildings 15, 16, 17, or 18, but there are other parties who dispute their lawfulness. In any case, I need to be satisfied myself, on the balance of probabilities, that any of the development is lawful if an LDC is to be issued. I am therefore required to consider the lawfulness of Buildings 15, 16, 17, and 18, even if the Council considers them lawful buildings.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

5. Section 191(2) of the Act confirms that uses and operations are lawful at any time if no enforcement action may be taken in respect of them and they do not constitute a contravention of an enforcement notice. There is no suggestion that Buildings 14, 15, 16, 17, or 18 may be in contravention of any enforcement notices.
6. At the time the application was made, no enforcement action could have been taken against unauthorised building operations after they had been substantially complete for four years, and no enforcement action could have been taken against an unauthorised material change of use which had taken place at least ten years prior¹.

Building 14

7. I was able to see a concrete base covering a limited area of land and the remnants of what may or may not have been a small concrete feed trough, amongst undergrowth. The concrete is clearly of some age, and there can be very little doubt, even on the limited evidence, that the hardstanding has been in place for more than 4 years. This is consistent with the appellant's claims, which are sufficiently precise and unambiguous in respect of the concrete base.
8. I am therefore satisfied that the concrete base in the position referred to as Building 14 was lawful on the date of the application. This is because it is more likely than not that the concrete base was substantially completed more than 4 years prior to the date of the application. However, as I have been unable to identify with reasonable certainty an existing feed trough, it is not possible for me to confirm the lawfulness of a feed trough in this location.

Buildings 15, 16, 17, and 18

9. A Portacabin is normally a moveable structure, which is placed in a location and is capable of being taken away without any building operations being carried out. A lorry body can be a similar type of temporary structure, where the rear storage part of a goods vehicle has been removed and placed on the ground. A lorry body would also normally remain capable of being moved and taken away without any building operations being carried out.
10. Buildings 15, 16, 17 and 18 are not securely anchored to the ground, but rest under their own significant weight and have remained unmoved for more than 10 years. They are modestly sized structures, capable of easily being lifted by mechanical means and transported to another part of the site or elsewhere. The appellant's case is that Buildings 15, 16 and 17 were moved into their current positions from their 'original' positions elsewhere at the site in 2011. Building 18 was then moved into the former 'original' position of Buildings 15, 16 and 17, also in 2011, from elsewhere.
11. There is no dispute over the use of the structures or the land. Building 15 is used to store horse rugs; Building 16 is used as a horse feed store; Building 17 is used to store tack; Building 18 is used as a rest room. These descriptions are consistent with what I saw during my site visit, with Building 18 being connected to water, sewer, and electrical services and containing a kitchenette alongside seating, a table, and dog beds. These structures are therefore used

¹ Section 171B of the Act

in association with, and part and parcel of, the lawful primary use of land at the site for the keeping of horses².

12. Based on everything I have read and seen, Buildings 15, 16, 17, and 18 are temporary moveable structures which have been constructed elsewhere and placed on the land, rather than buildings which have been erected at the site. Their use of the land has not resulted in a material change in the use of that land, and as such they are not in breach of planning control, even if they were placed in their current positions less than ten years before the date of the application.

Conclusion

13. 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 the siting of two porta-cabins (Building 15 (5.5m x 2.4m) and Building 18 (12.2m x 3m)); Siting of two lorry backs (Buildings 16 and 17 (each measuring 2.1m x 3.1m)); and Hardstanding concrete base (Building 14) was not well-founded and that the appeal should succeed in part. The Council's refusal to grant a certificate of lawful use or development in respect of a field shelter (Building 12) and a feed trough (Building 14) was well-founded. I will exercise the powers transferred to me under section 195(2) of the Act.

Formal Decision

14. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the existing uses and existing operation which are found to be lawful.

L Douglas

INSPECTOR

² As specified in LDC ref: 15/01591/LDCEX

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 13 October 2021 the uses and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in blue on Plan A 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:

The siting of the portacabins and lorry backs in the positions annotated Buildings 15, 16, 17 and 18 on Plan B attached to this certificate do not comprise development requiring planning permission because they have been placed on the land without building operations taking place, and they have not brought about a material change in the use of the land. They do not therefore comprise development requiring planning permission.

The hardstanding in the position annotated Building 14 on Plan B attached to this certificate involved building operations which comprised development requiring planning permission. No planning permission exists for that development, but it was substantially completed more than four years before the date of the application, on the balance of probabilities.

No enforcement action could have therefore been taken in respect of the portacabins, lorry backs and hardstanding in the positions annotated Buildings 14, 15, 16, 17 and 18 on Plans A and B attached to this certificate on 13 October 2021.

Signed

L Douglas

Inspector

Date: 05th November 2024

Reference: APP/G2245/X/23/3317123

First Schedule

The siting of two porta-cabins (in the positions annotated Building 15 (5.5m x 2.4m) and Building 18 (12.2m x 3m) on Plan B attached to this certificate); Siting of two lorry backs (in the position annotated Buildings 16 and 17 (each measuring 2.1m x 3.1m) on Plan B attached to this certificate); and

Hardstanding concrete base (in the position annotated Building 14 on Plan A attached to this certificate)

Second Schedule

Little Postlings Farm, Five Fields Lane, Four Elms, Edenbridge TN8 6NA

IMPORTANT NOTES – SEE OVER

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.



Plan A

This is the plan referred to in the Lawful Development Certificate dated: 05th November 2024

by L Douglas BSc (Hons) MSc MRTPI

Land at: Little Postlings Farm, Five Fields Lane, Four Elms, Edenbridge TN8 6NA

Reference: APP/G2245/X/23/3317123

Scale: Not to Scale





Plan B

This is the plan referred to in the Lawful Development Certificate dated: 05th November 2024

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Land at: Little Postlings Farm, Five Fields Lane, Four Elms, Edenbridge TN8 6NA

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Scale: Not to Scale

