

# Appeal Decisions

Site visit made on 22 October 2024

**by J Moss BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 January 2025**

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## **Appeal A Ref: APP/N0410/X/24/3342315**

### **Cliveden Stud House, Cliveden Road, Taplow, Buckinghamshire SL6 0HL**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Mahadevan Krishnamohan against the decision of Buckinghamshire Council.
  - The application ref PL/24/0391/EU, dated 6 February 2024, was refused by notice dated 2 April 2024.
  - 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 stated in the application form as: 'Cliveden Stud House ("the House") was not built with the benefit of planning permission. The House was substantially completed more than 10 years ago and is therefore immune from enforcement'.
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## **Appeal B Ref: APP/N0410/X/24/3343710**

### **Cliveden Stud House, Cliveden Road, Taplow, Buckinghamshire SL6 0HL**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Mahadevan Krishnamohan against the decision of Buckinghamshire Council.
  - The application ref PL/23/0225/EU, dated 26 January 2023, was refused by notice dated 28 April 2023.
  - 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 stated in the application form as: 'Use of Cliveden Stud House otherwise than in compliance with the conditions attached to Outline Planning Permission with reference number ER/1466/68'.
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### **Decision - Appeal A**

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

### **Decision – Appeal B**

2. The appeal is dismissed.

### **Applications for costs**

3. An application for costs has been made by Buckinghamshire Council against Mr Mahadevan Krishnamohan. An application for costs has also been made by Mr Mahadevan Krishnamohan against Buckinghamshire Council. These applications are the subject of separate decisions.

## **Preliminary Matters**

4. Before I move on to consider the case made by the parties, it is important to set out a background to the appeals, clarify the matters that are the subject of the appeals and identify the main consideration in each appeal.

### *Main Issue – both appeals*

5. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue in the case of both appeals is whether the Council's decision to refuse to grant a LDC was well founded.
6. The test of the evidence is on the balance of probability and the onus of proof is on the appellant.

### *Background*

7. The appeal site for both appeals is identified on the site location plan submitted with the respective LDC applications. This plan appears to identify the application site as the footprint of the dwellinghouse known as Cliveden Stud House, hereinafter referred to as 'the Dwellinghouse'. This is located within a wider area that I have seen referred to as Cliveden Stud.
8. Both parties refer to an application for outline planning permission (reference ER/1466/68) for a 'private dwelling in connection with the stud'. The application site is stated as 'Cliveden Stud, Bucks'. A decision notice confirms that this application was approved on 31 December 1969, subject to a number of conditions.
9. There is also reference to an application for reserved matters, reference ER/679/70, which the parties say was made on 29 April 1970 and approved on 6 June 1970. The plans before me that relate to this application show that it also relates to land at Cliveden Stud.
10. A previous appeal relating to this site (reference APP/N0410/X/22/3310567) has been drawn to my attention. This was determined on 8 January 2024. Hereinafter, I will refer to this as 'the 2024 Appeal'.

### *Matter subject of Appeal A and Main Considerations*

11. Section 191(1) of the 1990 Act sets out the three matters for which an LDC application may be made. An LDC application may be made to ascertain whether any of these three matters are lawful. These matters are, in short (a) any existing use of buildings or other land; (b) any operations which have been carried out in, on, over or under land; and (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted.
12. The LDC application form asks for a description of the existing use, building works or activity for which the LDC is sought. The appellant's description

refers to the building of the 'House' known as Cliveden Stud House. In the section of the form that asks the grounds for the application, the appellant has ticked the box that states 'The building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application'.

13. It is clear from the application form that the matter for which the LDC is sought is development comprising the erection of the Dwellinghouse. This falls within section 191(1)(b) of the 1990 Act. Notwithstanding the description of the development stated in the application form and in the header above, I will determine the appeal on this basis, considering whether or not the development comprising the erection of the Dwellinghouse was lawful on the date the LDC application was made.

14. Section 191(2) informs that:

'For the purposes of this Act 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'.

15. I note the Council's decision to refuse to grant the LDC. However, having had regard to the case made by each party, there appears to be no dispute that the development comprising the erection of the Dwellinghouse is lawful within the meaning of section 191(2). I say this because it is the appellant's case that the development is lawful because the Dwellinghouse was erected without the benefit of planning permission (i.e. in breach of planning control), but that the time for enforcement action against this breach of planning control has expired. On the other hand, it is the Council's case that the development is lawful because the Dwellinghouse was constructed with the benefit of planning permission.

16. Accordingly, it is clear that the main dispute between the parties is not whether or not the development in question is lawful. The main dispute is the reason why the development is lawful.

17. In making their case on Appeal A, the appellant refers to the Inspector's conclusions in the 2024 Appeal. The matter considered in that appeal was, in short, whether or not the development comprising the erection of the Dwellinghouse had the benefit of the planning permission granted by reason of the outline permission and subsequent reserved matters approval. The appellant still maintains their position, that the development was constructed in breach of planning control. However, they now make the case that the outline application ER/1466/68 was invalid and, as such, there was no outline planning permission. It is for this reason that the appellant maintains that the development does not have the benefit of planning permission. Whether or not this is correct is the main consideration in Appeal A.

*Matter Subject of Appeal B and Main Consideration*

18. The description in the application form of the matter for which the LDC is sought on Appeal B is the 'use of Cliveden Stud House otherwise than in compliance with the conditions attached to Outline Planning Permission with reference number ER/1466/68'. The form asks the applicant to indicate the reason why they are applying for an LDC. Three options are given. Although one option is for 'an existing use' the appellant has chosen the option on the form that says 'an existing use, building work or activity in breach of a condition'. This would indicate that the matter for which the LDC is sought falls within section 191(1)(c) of the 1990 Act rather than 191(1)(a).
19. Ordinarily, LDC applications made under section 191(1)(c) would fall to be considered under section 191(3), which sets out the circumstances that must be satisfied in order for any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted to be lawful.
20. However, the appellant's case under Appeal B is not that there has been a failure to comply with any of the conditions or limitations of the planning permissions referred to above. Their case is that the conditions of the ER/1466/68 outline planning permission do not apply to the Dwellinghouse and how it is used. They say that this is because the Dwellinghouse was not constructed with the benefit of the outline planning permission and that the development and its use cannot, therefore, be controlled by any of the conditions of that planning permission.
21. The appellant says that their case under Appeal B is made in the alternative to that made under Appeal A. They say that, Appeal B is 'to provide the Inspector dealing with the appeal with an alternative option for dealing with the lawfulness of the property in question'. The appellant's alternatives are:
  - a) that outline planning permission has not been granted because ER/1466/68 was not a valid application for outline planning permission (i.e. Appeal A); or in the alternative
  - b) that the development comprising the erection of the Dwellinghouse does not have the benefit of the ER/1466/68 planning permission (i.e. Appeal B).
22. Whilst the application form as completed refers to both a use of a building and building work or activity in breach of a condition, it is clear that the alternative question the appellant seeks an answer to in Appeal B is whether or not the use of the Dwellinghouse is controlled by the conditions and limitations of the ER/1466/68 planning permission.
23. In order to answer this question, I must consider whether or not the Dwellinghouse was constructed in accordance with (i.e. has the benefit of) the planning permission granted by reason of the ER/1466/68 planning permission. This matter is, of course, wholly relevant to Appeal A. However, having regard to the description given in the application form, which refers to a use of the Dwellinghouse, I will regard Appeal B as having been made under section 191(1)(a) of the 1990 Act (i.e. any existing use of buildings or other land). I

will, therefore, determine the appeal with regard to section 191(2), rather than section 191(3) which sets out the circumstances where a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful. The main consideration is whether or not the use of the Dwellinghouse otherwise than in accordance with the conditions and limitations of the ER/1466/68 planning permission was lawful on the date the LDC application was made.

24. I have considered both appeals together, as follows.

## **Reasons**

### *The 2024 Appeal*

25. I am told that all documents before me relating to the outline and reserve matters planning applications are the same as those before the Inspector in the 2024 Appeal.

26. In the Inspector's appeal decision, I note the agreed position at paragraph 5, which is:

'It was acknowledged by all that if the outline application site was the building footprint identified by the word 'red', then the reserved matters application, with the building mainly outside that building footprint, would not be a valid application for reserved matters. It was also accepted that if the building is not that approved by the outline permission, the conditions attached to the permission would not apply to the building as built.'

27. Reference to 'building footprint identified by the word 'red'' is to the annotation on the microfiche copy of the plan entitled 'block plan', provided at the appellant's appendix CS2 for Appeal A, hereinafter referred to as 'the Block Plan'. It is understood that the original version of the Block Plan was submitted with the ER/1466/68 outline application. There is a line from the word 'red' on the Block Plan pointing to a grey block on this plan. I note from the 2024 Appeal decision that it was established that the 'red' annotation was not on the plan when it was submitted with the outline planning application. The previous Inspector says that it was 'a later handwritten note'.

28. In the 2024 Appeal the appellant's case was that the grey block was the application site for the purposes of the outline planning application and that, as the proposed siting of the dwelling shown on the plans accompanying the ER/679/70 reserve matters application was not entirely within this area, the reserve matters application was invalid. It is for this reason that the appellant maintained that the Dwellinghouse does not have the benefit of planning permission. Whilst it was acknowledged that the grey block indicated the location for the proposed dwelling, the Inspector did not agree with the appellant, that this block identified the extent of land that was the subject of the outline application.

### *The Application for Outline Permission ER/1466/68 – Validity*

29. The appellant now takes an alternative view in their submissions on Appeal A. They point to the legislation at the time the outline application was submitted. An extract of the legislation has been provided, which informs that an

application shall 'be accompanied by a plan sufficient to identify the land to which the outline application relates'. The appellant now suggests that, having regard to the Inspector's remarks and conclusions in the 2024 Appeal decision, the ER/1466/68 outline planning application was not accompanied by a plan sufficient to identify the land to which the outline application related, and that the application was, therefore, invalid.

30. The outline application form submitted in 1968 appears to be a standard printed form. On the second page of the form, guidance is provided with regard to the plans that should accompany the application. These include a site plan that should be drawn on a scale appropriate to the development showing the land to which the application relates coloured pink, and any adjoining land in the same ownership coloured blue.
31. The letter accompanying the outline planning application, dated 3 October 1968, states that in support of the application, certain documents were attached. Four plans are referred to in the list in the letter. These include a 'Ground and First Floor Plan of the house' and a 'Perspective Drawing'. The description of these indicates that these are more detailed plans and are, therefore, unlikely to have been provided in order to identify the land to which the outline application related.
32. The list also includes a 'Plan of the full extent of the land in the Applicant's ownership', and a 'Block plan indicating position of the house'. I note from the microfiche copies of these plans provided that both plans are of a larger scale and that both have been annotated with some form of outline. In addition to the grey block annotation on the Block Plan, the plan is also annotated with what is referred to by the previous Inspector as 'a line drawn on the block plan at the perimeter'. This annotation is acknowledged by the appellant and there is no suggestion that this was later added; the indication is that this annotation was on the plan as submitted with the outline application.
33. The ownership plan is entitled 'Plan A' (a reference I will use from hereon in) is provided at the appellant's appendix CS4 for Appeal A and is referred to in the 1968 application letter as showing the ownership of Mr Freeman (the applicant) edged red and the land leased from the National Trust edged blue. The microfiche copy of this plan does not, of course, include any colour and the location of the outlines referred to in the letter are less defined when compared to, say, the perimeter outline on the Block Plan. There is, however, additional annotation on Plan A that is helpful in identifying these areas. The words 'red' and 'blue' with lines pointing to certain areas of the plan have been added.
34. Although the point at which this annotation was added to Plan A was not considered in the 2024 Appeal decision, it is similar to that added to the Block Plan, which the previous inspector described as a later addition. Accordingly, it is likely that the handwritten annotations on Plan A were also added after the plan had been submitted with the outline application. In my view these annotations are more likely than not to have been added to the plans before they were copied to microfiche. I say this because it is clear that the documents copied to microfiche in this case could only be stored in black and white. However, certain documents relating to planning applications (e.g. the plans identifying the land to which an application relates) must retain their

coloured annotation, hence the need to add the handwritten additions to the plans before being copied.

35. The handwritten 'red' annotation on Plan A points to two parcels of land, whereas the 'blue' annotation points to three parcels. It is not suggested that the handwritten annotations point to anything other than outlines that were coloured red and blue on the plan as submitted with the outline application. Indeed, I consider it likely that the red and blue annotations point to coloured outlines that were on the original plan before it was copied to microfiche. I say this because the same type of annotations can be seen on the plan provided at the appellant's appendix CS4A for Appeal A, which is also a microfiche copy of a plan where the outlines that the handwritten annotations on that plan point to appear far more defined.
36. The northernmost section of Plan A is land that is shown in a smaller scale on the Block Plan. The grey block (i.e. that annotated with the word 'red') on the Block Plan is broadly in the same location as the grey block I can see on Plan A. These plans were submitted together, and one was clearly intended to accompany the other.
37. I acknowledge that neither Plan A nor the Block Plan are described in the 1968 letter accompanying the outline application as plans identifying the land to which the application relates. This does not mean that the plans did not serve this purpose.
38. The evidence before me indicates that the ER/1466/68 outline application was, on the balance of probability, accompanied by a plan (i.e. Plan A) that identified land with a red outline and land with a blue outline, as required by the guidance on the outline application form. That the handwritten annotation on Plan A indicates that the outlines on the plan before it was copied to microfiche were in red, rather than pink as required on the form, is of little consequence in my judgement. The evidence also indicates that the application was also accompanied by a smaller scale plan showing part of the land shown on Plan A with an outline (i.e. the perimeter line), although I acknowledge that the perimeter line on the Block Plan is not annotated with a colour. Nevertheless, it is not unusual for planning applications to be submitted with more than one plan identifying all or part of the application site (i.e. all or part of the red outline) at different scales.
39. Notwithstanding the above, I have noted that the outline or outlines that the handwritten 'red' and 'blue' annotation point to are not entirely discernible on the copy of Plan A provided. This does not mean that these outlines were not clear on Plan A when it was submitted to the Local Planning Authority in 1968. Indeed, I note that the date of the outline application given on the ER/1466/68 decision notice is the same as the date of the letter that accompanied the outline application, 3 October 1968. I also note that the Local Planning Authority, Bucks County Council, went on to determine the application. This indicates that the Local Planning Authority were satisfied that the application had been validly made and that it was considered valid on the date it was submitted and accompanied by the plans referred to in the accompanying letter, which included Plan A.

40. All of the above indicates that at the time Plan A was submitted with the outline application, it was a plan that satisfied the requirements of legislation at the time for the purposes of making a valid outline planning application. Notwithstanding this, I note the appellant's reference to other plans and various comments within the previous Inspector's decision about these other plans. I consider these as follows.
41. The previous Inspector refers at paragraph 13 to an 'overall ownership plan' submitted 'in relation to a s12 application'. The appellant has provided a copy of a legal agreement (Appendix CS17 for Appeal A), which states was made under the provisions of section 12 of the Buckinghamshire County Council Act 1957. There is a plan attached to the agreement, which I will refer to from here on in as 'the S12 Agreement Plan'. I have no reason to believe that the previous Inspector's reference to a 's12 application' is to anything other than this legal agreement and the plan attached to it.
42. The agreement refers to the grant of permission under reference ER/1466/68 (i.e. the outline planning application) for the erection of a private dwellinghouse. The covenants of the agreement include the restriction of the occupation of the dwellinghouse to the owner of the land edged pink on the plan attached to the agreement or to a person whose full time employment is in connection with the management or running of the land edge pink on the S12 Agreement Plan. Whilst the OS base of the S12 Agreement Plan might be the same as that of Plan A, it is not the same plan. Plan A has a title, and the hand written 'red' and 'blue' annotations on Plan A indicate that this identifies a greater area than that identified on the S12 Agreement Plan.
43. I also note reference to a plan in condition 6 of the decision notice for the ER/1466/68 outline application. The appellant says that the plan referred to is that provided at appendix CS4A for Appeal A. This plan is also referred to in paragraph 13 of the 2024 Appeal decision. Although the CS4A plan has the same title as Plan A, the condition refers to this having been submitted on 18 December 1969. This date is not entirely consistent with the date stamp or date of the letter that is partly visible in appendix CS4A. Nevertheless, there is no dispute that the CS4A plan is that referred to in condition 6 and that this plan was not submitted at the same time as the outline planning application. Again, the CS4A plan (hereinafter referred to as 'the Condition 6 Plan') is clearly not the same plan as Plan A.
44. The appellant points to paragraph 13 of the 2024 Appeal decision in suggesting that the Inspector dismisses Plan A and the 138 acres identified on this plan<sup>1</sup> as identifying the area to which the outline consent relates. This is not my reading of the 2024 Appeal decision. The 'little weight' given at paragraph 13 is with regard to the S12 Agreement Plan and to the Condition 6 Plan. It is not given to Plan A. Indeed, whilst I am told that Plan A was before the previous Inspector, I can see no obvious reference to it in the 2024 Appeal decision.
45. I understand the reason why the previous Inspector gave little weight to the S12 Agreement Plan and the Conditions 6 Plan in 'deciding the application site for the outline application'. Neither plan was submitted with the outline application. The first was provided for the purposes of identifying land referred

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<sup>1</sup> 138 acres is stated on the outline application letter as the area edged red on Plan A.

to in the agreement and the second plan serves to identify the land referred to in condition 6. Plan A, on the other hand, was submitted with the outline planning application and was submitted for the purposes of informing the application.

46. Notwithstanding the above, the Condition 6 Plan and the S12 Agreement Plan may assist in identifying what would have been outlined in red on Plan A when it was first submitted. The 1968 outline application letter states that the area identified with a red outline on Plan A was within the freehold ownership of the applicant (Mr Freeman) at the time the outline application was made. Mr Freeman was a party in the section 12 agreement and is referred to in the agreement as 'the Owner'. The agreement informs that Mr Freeman is in possession of the estate known as Cliveden Stud Farm, which is formed of two separate parcels, one edged pink and the other edged green on the S12 Agreement Plan. Although the colours on the copy of the plan provided are not quite pink and green as referred to in the agreement, the two areas identified on the S12 Agreement Plan are clear. The parcels of land identified on the S12 Agreement Plan are also consistent with the parcels identified on the Condition 6 Plan.
47. The Condition 6 Plan and the S12 Agreement Plan provide a reliable indication of the land that would have been in the ownership of the applicant, Mr Freeman, at the time the outline application was made. As the 1968 outline application letter indicates that the land within the freehold ownership of the applicant has been edged red on Plan A, it is more likely than not that the red outline on Plan A would have been the areas outlined on the Condition 6 Plan and the S12 Agreement Plan. Indeed, the two areas identified on the Condition 6 Plan and the S12 Agreement Plan are broadly consistent with the two areas that the 'red' handwritten annotation points to on Plan A.
48. Having compared the location of the perimeter outline on the Block Plan with the land identified on the S12 Agreement Plan and the Condition 6 Plan, I note that there is a degree of inconsistency, not least because the perimeter outline is incomplete. The perimeter outline on the Block Plan may well have been an attempt to indicate the position of the red outline that would have been on Plan A, and a handwritten annotation indicating the colour of this perimeter line may well have been missed in error. Nevertheless, this does not alter my conclusions above with regard to the land that is more likely than not to have been identified in red on Plan A when originally submitted.
49. For the reasons given above, the ER/1466/68 outline application was, on the balance of probability, accompanied by a plan sufficient to identify the land to which the outline application related for the purposes of the validation of the application, in accordance with the legislation referred to by the appellant. Accordingly, it is more likely than not that the ER/1466/68 outline planning application was validly made.
50. I do not consider my conclusions thus far to be inconsistent with those of the previous Inspector. Whilst their findings do not address some of the issues I have above, it is important to note that the appellant's case made in the 2024 Appeal was different to that made in the appeal before me. The 2024 Appeal

decision was, therefore, written with a different question or questions in the Inspector's mind.

51. The Inspector's conclusions with regard to the Block Plan are not that it does not identify the application site area for the purpose of the outline application, as suggested by the appellant. Their conclusions are that it does not identify the grey block with the hand written 'red' annotation as the application site. The Inspector goes no further than this, only adding that there is no explanation for the perimeter line on this plan. My conclusions with regard to this plan are not inconsistent with this.
52. My reading of the previous Inspector's decision is not that they were 'unable' to identify the application site subject of the outline application; it is that they did not need to do so. It appears to me that the matter in dispute in that case was whether or not the grey block on the Block Plan was the extent of the outline application site. The Inspector's conclusions respond to this dispute and simply go no further.
53. Whilst the Council may well have only identified the footprint of the Dwellinghouse on the plan accompanying the breach of condition notice, dated 21 February 2020, it is of no consequence to my decision that this does not identify the application site subject of the ER/1466/68 outline application. Notwithstanding this, I do not find the outline on the plan attached to the notice to be irrational, particularly as the conditions said to be in breach relate to the occupation of the Dwellinghouse itself.
54. I can agree with the appellant, that the plan submitted with the ER/679/70 reserved matters application is not a plan that identifies the application site for the purposes of the ER/1466/68 outline application. Nevertheless, there is no evidence to substantiate the claim that it was submitted in an attempt to 'rectify the deficiency in the original application for outline consent'.

#### *Use of the Dwellinghouse*

55. The LDC application subject of Appeal B was made prior to the determination of the 2024 Appeal. The appellant says at paragraph 1.8 of the statement accompanying the application that the 2024 Appeal application sought to demonstrate two propositions. These were, in short:
- i. that the erection of the Dwellinghouse does not have the benefit of the planning permission granted by reason of the ER/1466/68 outline planning permission; and, in the alternative
  - ii. that the Dwellinghouse was not erected in accordance with the plans and drawings approved by reason of the ER/679/70 reserved matters approval.
56. The statement confirms that the Appeal B application was submitted pursuant to the first proposition only. This is, of course different to the case made by the appellant on Appeal A.
57. In the procedural matters of this decision I clarify that, for the purposes of section 191(1), the main consideration in Appeal B is whether or not the use of the Dwellinghouse otherwise than in accordance with the conditions and

limitation of the ER/1466/68 planning permission was lawful at the time the application was made. I also clarify that, in order to determine Appeal B, I must consider whether or not the Dwellinghouse was constructed in accordance with (i.e. has the benefit of) the planning permission granted by reason of the ER/1466/68 planning permission.

58. Appeal B was made following the determination of the 2024 Appeal. The appellant says that Appeal B has been made in order to 'provide the Inspector dealing with the appeal with an alternative option for dealing with the lawfulness of the property in question'. The appellant suggests that, should I conclude that the ER/1466/68 planning application was validly made, the only possible outcome is that 'the "Block Plan" accompanying the application for Outline Planning Permission ER1466/68 does, in fact, identify the area for which the permission was granted'.
59. It appears, therefore, that I am being invited to revisit matters that were considered by the previous Inspector in the 2024 Appeal. I am being asked to find that the grey block identified with the handwritten 'red' annotation on the Block Plan is the land to which the ER/1466/68 outline planning application and subsequent permission relates.
60. Although I have not been provided with the full details of the parties' respective cases made in respect of the 2024 Appeal, the indication is that the appellant's statement accompanying the Appeal B LDC application is broadly the same as the case made by the appellant in the 2024 Appeal in so far as it relates to the first proposition, mentioned above.
61. The appellant has added to this in their appeal statement. They refer to the perimeter line drawn on the Block Plan and suggest that this would have been a blue outline rather than a red outline. They suggest this because this land is identified on the reserved matters site plan with a handwritten 'blue' annotation. I am not, however, persuaded by this.
62. Having regard to the terms under which the dwelling was proposed in the ER/1466/68 outline planning application, it would be reasonable to expect that the plans submitted with that application identified the land to which the occupation of the proposed dwelling might have been tied, such that this would have been the land identified on the accompanying plans as the land to which that application relates. On the other hand, the ER/679/70 reserved matters application provided the details of the proposed dwelling approved at outline stage, as required by the conditions of the ER/1466/68 outline planning permission, including its siting on the land within the applicant's ownership and control. It would not, therefore, be surprising if there was a difference between the outline application and reserve matters application in how the land was identified on the original plans that accompanied these applications.
63. With regard to this particular matter, my attention has been drawn to appeal decision, reference APP/T2215/C/20/3248672. The lack of detail relating to that appeal makes it difficult to make an informed comparison with the appeal before me. Nevertheless, I note the Inspector's findings with regard to an incomplete line marked on a plan and the appellant's comparison of this to the perimeter line drawn on the Block Plan.

64. I acknowledge the degree of ambiguity caused by the lack of a handwritten annotation for the perimeter line on the Block Plan. However, I have concluded above that Plan A is more likely than not to have identified the land to which the application relates (i.e. the 'red' land on the plan) as being consistent with the land identified on the S12 Agreement Plan and on the Condition 6 Plan. This is why I say that the perimeter outline on the Block Plan may well have been an attempt to indicate on that plan, on a smaller scale, the position of the red outline that would have been on Plan A. My conclusions with regard to Plan A are not altered, despite the perimeter line being incomplete and not annotated on the Block Plan.
65. The appellant has referred to the comments of a planning officer in 2022. They have provided email correspondence which they suggest demonstrates that the officer and/or the Council was of the view that the ER/1466/68 outline planning permission had not been implemented. However, none of the correspondence from the Council provided by the appellant states this. There is an email from the appellant's representative, dated 31 October 2022, which appears to relate to a conversation the writer had with a Council officer and states what the writer has understood to have been said by the Council officer. None of the correspondence from the Council confirms whether the appellant's understanding of the officer's comments was correct. Even if the writer had understood the officer's comments correctly, this is clearly at odds with the Council's official position in the 2024 Appeal and is also at odds with the conclusions of the Inspector in that appeal. This evidence gives me no reason to change my findings in this case.
66. I have had regard to the other appeal decisions brought to my attention, which refer to the interpretation of a planning permission. It is unfortunate that, in this case, any uncertainty with regard to the land to which the ER/1466/68 outline application relates appears to have resulted solely from the way in which the relevant plans (i.e. Plan A and the Block Plan) were stored. An attempt was made to overcome this uncertainty by adding handwritten annotations to the plans. Whilst this has been of some assistance, it has been necessary to have regard to other plans that directly relate to the permission. Having done so, I consider myself to be in accordance with the caselaw referred to by the appellant. Notwithstanding that the previous Inspector correctly indicates that these types of cases are particularly determinative on their own facts, my conclusions with regard to the planning permission in this case are reasonable in light of the evidence before me.
67. Indeed, I note the appellant's reference to appeal reference APP/E2001/X/13/2208744, and acknowledge that a valid application for planning permission can be made which only identifies the footprint of a proposed building as the land to which the application relates. However, having regard to the case before me, I can only agree with the conclusions of the previous Inspector in the 2024 Appeal, where at paragraph 17 they state, 'on the balance of probability, that the red line defining the site for the outline application would not have been the building plan itself, as identified 'red' on the plan'.

### *Summary*

68. Having considered whether or not the outline planning application reference ER/1466/68 was validly made, I have concluded that, on the balance of probability, it was accompanied by a plan sufficient to identify the land to which it related for the purposes of the validation of the application, in accordance with the legislation referred to by the appellant. For this reason, I have found it more likely than not that the ER/1466/68 outline planning application was validly made. Accordingly, outline planning permission was subsequently granted by reason of that application.
69. I note that the appellant does not dispute that the Dwellinghouse was erected in accordance with the plans and drawings approved by reason of the subsequent ER/679/70 reserved matters approval. In this regard, I have no reason to disagree with the previous Inspector's conclusion at paragraph 30, that 'the building would, on the balance of probability, have been in accordance with the reserved matters approval'. In addition to this, I am satisfied that the reserved matters plan proposing the siting of the dwelling (identified with a hand written 'red' annotation on the copy provided at the appellant's appendix CS8 for Appeal A), shows a location that is entirely within land that I have found to be the subject of the ER/1466/68 outline planning permission, on the balance of probability.
70. In view of this, and all things considered, I conclude that, on the balance of probability, the Dwellinghouse was constructed with the benefit of planning permission granted by reason of the ER/1466/68 outline planning permission and the subsequent ER/679/70 reserved matters approval. It is for this reason that I conclude that the development comprising the erection of the Dwellinghouse was lawful for the purposes of section 191(2) of the 1990 Act on the date that the LDC application subject of Appeal A was made.
71. In view of this, I can only conclude that the use of the dwellinghouse is controlled by the conditions and limitations of the ER/1466/68 outline planning permission. For this reason, I find it more likely than not that the use of the Dwellinghouse otherwise than in accordance with the conditions and limitations of the ER/1466/68 planning permission was not lawful for the purposes of section 191(2) of the 1990 Act on the date the LDC application subject of Appeal B was made.

### **Conclusion – Appeal A**

72. In view of my findings above, I must conclude that the Council's refusal to grant a certificate of lawful use or development for the development comprising the erection of the Dwellinghouse (known as Cliveden Stud House) was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act. However, in doing so I will make clear the reason for the grant of the certificate.

### **Conclusion – Appeal B**

73. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of Cliveden Stud House otherwise than in compliance with the conditions attached to the outline

planning permission with reference number ER/1466/68 was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

*J Moss*

INSPECTOR

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# 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

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**IT IS HEREBY CERTIFIED** that on 6 February 2024 the operation 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the ER/1466/68 outline planning application was validly made and outline planning permission was subsequently granted by reason of that application for a 'Private dwellinghouse in connection with the Stud' at Cliveden Stud, Bucks. Furthermore, it is more likely than not that the dwellinghouse referred to in the second schedule was constructed in accordance with the permission granted by reason of the ER/1466/68 outline planning application and subsequent approval of reserve matters, reference ER/679/70.

Signed

*J Moss*

Inspector

Date: **13 January 2025**

Reference: APP/N0410/X/24/3342315

## ***First Schedule***

The erection of the dwellinghouse know as Cliveden Stud House.

## ***Second Schedule***

Cliveden Stud House, Cliveden Road, Taplow, Buckinghamshire SL6 0HL

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



## Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 January 2025

by J Moss

Land at: Cliveden Stud House, Cliveden Road, Taplow, Buckinghamshire SL6 0HL

Reference: APP/N0410/X/24/3342315

Scale: Not to Scale

