



Appeal Decision

Site visit made on 14 January 2025

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2025

Appeal Ref: APP/J1915/X/23/3320915

Primrose Cottage Farm, High Wych Road, Sawbridgeworth CM21 9HH

- 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 Ms S Ashley against the decision of East Hertfordshire District Council.
 - The application ref 3/22/1866/CLEO, dated 1 September 2022, was refused by notice dated 17 March 2023.
 - The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use and development for which a certificate of lawful use or development is sought is described as "Material change of use of the building from an agricultural shed to an office which was complete in June 2011 and the subsequent continuous use as an office (Use Class E(g)(i), formerly Use Class B1) from this date to the date of this application. In addition to the operational development, addition of a timber lean-to side extension, which was completed in 2017."
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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 and development which are considered to be lawful.

Preliminary Matters

2. This appeal is one of two¹ LDC appeals made in relation to different uses on different portions of land at Primrose Cottage Farm. Each appeal has a separate decision letter as they relate to different matters but I have looked at the Council's planning history for both applications for each appeal as it is helpful in understanding the development of the site.
3. Both applications were accompanied by numerous appendices. However, not all of these documents were initially submitted with the appeals as the appellant had used a different agent from the applications, who was Sworders in the first instance. In the interest of fairness and so that I could properly review the council's decision, I asked for copies of the missing documents. Most of these were eventually submitted for my consideration and the Council were kept informed during this process.

Main Issue

4. The main issue is whether the Council's decision was well-founded.

¹ The other appeal reference number is APP/J1915/X/23/3320911

Reasons

5. The appeal concerns the use and extension of a detached single storey building within the extensive grounds of what is now known as Primrose Cottage Farm. The appellant previously occupied Primrose Cottage, a detached bungalow on the site, and the surrounding land formed, in effect, an agricultural smallholding, now discontinued. The former rectangular site currently has several uses, all of which are accessed from a singular point on High Wych Road.
6. The short access drive into the site divides into an access leading to Primrose Cottage, which has a front and rear garden situated behind a security gate, and then behind a second security gate, the drive roughly follows the northern and south eastern boundary of the site. In the forecourt area in front of the second gate, there is a large, fenced area enclosing refuse and recycling bins for the occupiers of the static caravans (the subject of the second LDC application). The former agricultural shed is situated just beyond the security gate, hard up against the boundary with 101 High Wych Road. It is a long narrow building with a very low and shallow pitch roof in part. At the northern end there appears to be a modern extension in breeze block with upvc windows and a door and at the southern end there is a small timber enclosure with a plastic corrugated roof.
7. There are several rooms within the building and the southern extension is used to enclose a bin area. The Council speculate because it is a significant size, it must be used to store refuse for other uses on site. However, the occupiers of the static caravans have their own waste storage area and it is possible that the size of the shed office's waste area is needed to deal with waste from the caravan/motor home rentals.
8. I saw that the breeze block extension is used as an office with several workstations. Adjacent to this the space is used as a staff meeting area, where there is also a toilet. This floor area is larger than the office and it contains a table but the headroom is severely restricted. This room then opens onto a mixed use area where there are welfare facilities for the staff such as a sink, microwave, fridge/freezer and 2 washing machines as well as filing cabinets. Again, the headroom is severely restricted which probably explains why the staff work in the northern extension where even though the floorspace is smaller, there is better headroom. At the time of the Council's site visit in 2022 the filing cabinets were in the meeting area but the appellant has moved them to sort them given changes are afoot following the sale of most of the Primrose Cottage Farm land to someone else.
9. Section 191(2) of the Town and Country Planning Act 1990 (the 1990 Act), indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them because, for instance, the time for enforcement action has expired and (b) they do not contravene the requirements of any enforcement notice or breach of condition notice in force. Subsection 191(2)(b) is met here as there is no enforcement notice or breach of condition notice in force. I shall now consider section 191(2)(a).
10. The application is dated 1 September 2022 and therefore the relevant date for the purposes of lawfulness (4 years, section 171B of the Town and Country Planning Act 1990, (the 1990 Act)) for the extension is 1 September 2018. The Council have raised some concerns that the application red line shown on the Location Plan and

Site Survey Plan cuts through the building but this is not how I have interpreted the plans.

11. The survey drawings prepared by Sworders show with a black line the former agricultural shed and a detached square building to the north. Overlaid on top of this outlined and hatched in red is the shed building the subject of this appeal as it appears today. It seems that the detached building to the north has now become part of the shed, which has been extended to the south. The appellant confirmed to the Council that lawfulness is claimed with regard to the southern extension (the timber/plastic corrugated structure that I saw).
12. Substantial completion of the extension by the relevant date is shown by the appellant with reference to Google Earth imagery dated 26 March 2017 and 10 April 2020. These images, due to their lack of clarity when enlarged, have their limitations but they appear to show that something was placed or added to the southern end of the shed after March 2017. There is no other evidence to support what this might be or that it was there by 1 September 2018. Nevertheless, I saw that the timber extension exhibits a fair amount of wear of tear, for example there is green algae on the lower part of the fence panels and the roof has yellowed. These are indications that it has been there for some time and on the balance of probabilities I find it is more likely than not it was substantially complete by the relevant date.
13. The evidence to support the conversion of the shed into an office relies on three invoices from P & J Builders. The description of the works in each invoice is brief with the first dated 30 October 2009 stating "Re Fencing at Primrose Cottage: Fencing behind new proposed office". The second is dated 5 May 2011 for "Phase 1 office reconstruction" and the third is dated 9 June 2011 for "Phase 2 office reconstruction – kitchen and welfare areas".
14. It appears from the photograph exhibited at Appendix 3 that the original fence behind the shed was brown, close boarded in the lower section and had a deep section of trellis on top. Although the photograph is not date stamped it has been provided from Sworders' archive and it is labelled as "Application plans – 904795 – Appendix 3 photograph dated 29 06 06". The information button on the image shows that the photograph was taken using a digital camera (Fujifilm Finepix) and the date is recorded as "29 June 2006". No evidence has been provided, for example from the Council's site visits over the years, to contradict the details shown in the image.
15. The 4 photographs of the shed exhibited at Appendix 7 are also from Sworders' records and these show that the fence behind the shed has changed to a fully close boarded fence that is green. Although Sworders state that these photographs of the shed are dated 14 October 2011, the data automatically stored behind the information button when the image is taken shows that they were taken on 7 August 2011. In my view these photographs support P&J Builders first invoice. It was addressed to the appellant at Primrose Cottage as this is where she lived.
16. The two remaining invoices are addressed to Powerdrama Ltd, Primrose Cottage, which is one of the companies run by the appellant. The third invoice refers to "kitchen and welfare areas" and I saw that there is indeed a kitchen and a WC within the office building. It is possible that the invoices related to works at Primrose Cottage which appears to have been run as a bed and breakfast and with

two chalets in the garden² but it is doubtful that this building would have needed another kitchen.

17. There is an invoice from Jacek Przeslica dated 16 March 2012 for the “diversion of foul drain from office”. I find this supports the shed being converted into the office, as opposed to part of Primrose Cottage, as the static caravans on site (the second LDC appeal) are all connected to two septic tanks in the bottom corner of the site. Finally, Appendix 28 is a Practical Equipment Testing (PAT) certificate dated 28 May 2018 and the electrician has meticulously set out the location and listed all the equipment he has tested. He begins with the studio flat in the “Main house” (which I presume is Primrose Cottage), then chalet 1 then the office. If the office was in the house, I believe he may have listed the tested items there before he moved onto chalet 1.
18. So, although there are no plans of the office reconstruction, I am fairly certain that the P&J Builders invoices relate to the shed, especially as I saw no other office buildings at Primrose Cottage Farm. As the Council point out, the invoices do not show that there was a material change of use to an office but in my view, they show intent, which is the first step when making a change of use.
19. Turning now to the evidence of use, the relevant date for this is 1 September 2012 (10 years, section 171B of the 1990 Act). An office use is claimed for the whole of the building on the basis that the primary activity is as an office. I agree as the staff meeting area and welfare area are ancillary to the primary use. In addition to the B&B that was run from Primrose Cottage and the previous agricultural use of the land (fruit and vegetables), the appellant is the director of two other businesses: Powerdrama Ltd and Future Living Sawbridgeworth Ltd.
20. The first is the name of the business covering caravan storage, rental and consulting services on Primrose Cottage Farm. It appears from the Council’s planning history that this activity has been ongoing since before October 2012. A LDC was granted in the 1970s for caravan storage in the north west corner of the site. The appellant extended this area southwards at some point and applied for planning permission to continue the use in 2012 and although it was refused, it appears the use was not discontinued. The second business was set up in 2016, though it is not known what activities are carried out in relation to it. Powerdrama Ltd therefore operate a substantial caravan storage and rental business.
21. The registered address for Powerdrama Ltd was Primrose Cottage according to the submitted audited accounts from 2010 until 2021 though this was changed on 4 January 2022 to the appellant’s accountants’ address, no doubt following the sale of Primrose Cottage. The Council are of the view that the office use associated with running the businesses must have taken place at Primrose Cottage given that is also the address used on the official Annual Returns. However, many businesses do not operate from their official address especially when an accountants’ or a solicitors’ address is used instead. A business may have begun at home but then once established locates elsewhere when more people are employed to run it. This scenario seems to have occurred with the appellant. According to the invoices Powerdrama Ltd began renting the shed office in June 2012

² Planning permission granted in 2009

22. The PAT certificate shows that in 2018 there were 3 monitors in the office together with 4 printers, a paper shredder, a laminator and 2 phones. There were also 2 heaters and an anti-surge 6-way lead. It is hard to imagine that all this would be present in a home office set up in Primrose Cottage and it is more likely than not that this relates to what I saw in the shed office. The Norton antivirus software invoice dated 20 February 2014, the Microsoft tax invoice dated 17 March 2014 and a BT business phone bill are all addressed to Primrose Cottage Farm, which is the parcel of land beyond the second security gate that includes various uses as well as the shed office.
23. Evidence is also submitted detailing the rent paid by Powerdrama Ltd to the appellant for the use of the office (Barclays statement dated 10 January 2014, 6 months rent and invoices dated July-December 2013.)
24. Much of the appellant's evidence on use is discounted by the Council as it features Primrose Cottage in the address but it is necessary to look at the totality of the evidence and the story it tells. Various Viking Office supplies invoices over the years,³ for paper and ink cartridges for example, indicate that an office use is taking place somewhere on site and as I have already concluded there is not another suitable building on site, it is more likely than not to be taking place in the shed office. Similarly, several BT business bills over the years⁴ detail 4 phone and 3 broadband lines which in all likelihood are for an office use taking place in the shed office where there are several work stations. There is another invoice from Jacek Przeslica dated 31 (sic) September 2017 for "Work done in Portacabin, Workers Area and Office". The "Office" is the only office on site and it is unlikely to be called an office if it is used for another use.
25. There are other documents from the appellant that purportedly show an office use. The Castle Water statement dated 22 June 2022 and the associated emails from 2021 are not clear, even though the statement is addressed to Powerdrama Ltd, Primrose Cottage Farm. The amounts being charged appear very large for a small office and it may be that water is being supplied for other uses as well. This however has not been explained by the appellant. The weight I can give this evidence is therefore limited.
26. There is also a large document labelled "Sylvia Ashley Invoices" which runs to numerous pages and appears to list all the invoices issued by the appellant to various people in 2014 and 2015 in the form of a table. These include people who have used rooms in the B&B, the chalets, the studio flat, the static caravans as well as Powerdrama's monthly rent of the office. It also records that for several months in 2014 the office was rented to Martyn Bush but there is no further information as to the identity of this person. The Council considers this document merits limited weight but it is clear that Powerdrama Ltd are paying rent for an office use and as I have already concluded, there is only one building that this could relate too.
27. In arriving at my conclusion, I am conscious that the Council have concerns that each bundle of evidence, for example the BT phone bills, does not cover the entire period from the relevant date to the date of the application and that there are gaps in each bundle of evidence. The Council also state that their Council Tax and Business Rates Department have advised that they do not have any records associated with the shed office.

³ Dated 20 September 2013, 3 July 2017, 25 April 2018 and for the period 1 July 2019 – 30 June 2022

⁴ Earliest dated 11 May 2011 and thereafter dated 27 of the month through 2011, 2014, 2015, 2017, 2018, 2019 until 6 Feb 2020

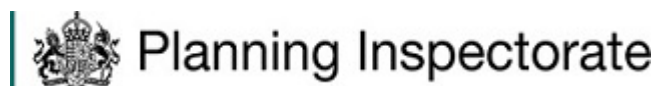
28. It is inevitable when seeking to document a use over 10 years that not all of the individual pieces of evidence are as precise, exact or complete as the Council would like. This is why the test for the evidence is “on the balance of probabilities”, namely what is more likely than not. That balance of the evidence need only be slightly more than half in order to satisfy the test.
29. Having regard to the totality of the evidence, I find it does not make the appellant’s version of events less than probable. In my view the appellant’s evidence overall is sufficiently precise and unambiguous to support the claimed use and development of the shed office. I therefore conclude that the shed office southern extension was substantially complete more than four years before the date of the application and the whole shed office building has been used as an office for more than 10 years before the date of the application. Both developments are therefore lawful.

Conclusion

30. 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 material change of use of the building from an agricultural shed to an office (Use Class E(g)(i)) and the addition of a timber lean-to side extension 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 and issue a Certificate.

D Fleming

INSPECTOR



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 1 September 2022 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in red on the plan 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 material change of use of the building from an agricultural shed to an office (Use Class E(g)(i)) began June 2012. It became lawful by continuing for a period of over ten years prior to the date of submission of the application and does not contravene the requirements of any enforcement notice in force. The timber lean-to side extension was substantially complete by 1 September 2018, which is more than four years prior to the date of submission of the application and does not contravene the requirements of any enforcement notice in force.

Signed

D Fleming

Inspector

Date: 24th January 2025

Reference: APP/J1915/X/23/3320915

First Schedule

Material change of use of the building from an agricultural shed to an office (Use Class E(g)(i)) and the addition of a timber lean-to side extension

Second Schedule

Land at Primrose Cottage Farm, High Wych Road, Sawbridgeworth CM21 9HH

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

This is the plan referred to in the Lawful Development Certificate dated: 24th January 2025

by D Fleming BA (Hons) MRTPI

Land at: Primrose Cottage Farm, High Wych Road, Sawbridgeworth CM21 9HH

Reference: APP/J1915/X/23/3320915

Scale: Not to Scale

