



Appeal Decision

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 29th January 2025

Appeal Ref: APP/D1265/X/24/3344283

Moonridge Farm, Main Road, Mosterton, BEAMINSTER, DT8 3HP

- 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 Mark Pout against the decision of Dorset Council.
 - The application ref P/CLE/2023/02814, dated 16 May 2023, was refused by notice dated 15 November 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is Creation of a permanent dwelling with denoted domestic curtilage and the use of the adjacent yard area and barn for the storage of items relating to agriculture and an Engineering business. The retention of a barn for a mixed Agricultural and commercial use.
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Decision

1. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the extent of the existing use and operations which is found to be lawful.
2. So far as the creation of a permanent dwelling with denoted domestic curtilage is concerned, the appeal is dismissed.

Reasons

3. The appellant purchased Moonridge Farm in October 2008. The overall holding extends to 11.739ha. Most of the land is fields laid to permanent pasture and used for livestock grazing. The application concerns the roughly centrally located yard area, primarily its use. The appellant now lives on part of the yard, which I return to below. As well as farming the holding he is a mechanical engineer and uses the yard and a barn granted permission in 2011¹ for the storage of items relating to agriculture and an engineering business. The Council accepts that sufficient evidence has been provided to demonstrate, on the balance of probabilities, that there has been an ongoing breach comprising a change of use of the yard area and barn for the storage of items relating to agriculture and an engineering business, along with the retention of a barn for a mixed agricultural and commercial use, such that immunity from enforcement action in respect of that breach has been achieved. I have no reason to come to a different view on that matter, and I am satisfied that it occurs on a defined area that comprises a single planning unit. Hence a LDC can be granted for the use, subject to minor amendments. Although not directly addressed by the Council in its submissions or reports, the application also sought the retention of a small shed to the west of the northern elevation of the permitted barn, apparently used as a pump house and store as part of the agricultural enterprise. This is clearly evident in aerial imagery

¹ Council Ref. 1/D/11/001005

from 2017 on, and hence, as operational development is, on the balance of probabilities, now immune from enforcement action. I shall refer to this in the LDC. I should add also that the use of the term 'commercial use' to describe the engineering element of the use of the barn is too broad, so I shall describe it as 'engineering use', which reflects the evidence submitted.

4. What remains in dispute concerns the residential use of a separate defined area with the yard. It is not disputed that the appellant moved a mobile home onto the yard area some time in 2012. He claims now that he has lived there since then as his only residence. Although this is disputed by the Council, and it is the subject of much of the evidence adduced, that is not what the application seeks to establish. In 2015 a second mobile home was stationed close to the first one and a structure was subsequently built between the two, linking them and forming, in the appellant's view, a building which he claims has since been used as a dwellinghouse. The linking structure is a roofed timber platform fixed by bolts through the walls of the mobile homes on either side. The wooden structure is on posts concreted into the ground. The basis of the application and appeal on this matter is that the overall structure comprising the mobile homes and linking structure is now a building and in use as a dwellinghouse. It is said to have been substantially completed in 2016.
5. While the Council disputes that the overall structure is now a building, for the purposes of the application that is ultimately a matter that I do not need to resolve, which is why I have not felt it necessary to carry out a site visit. The application seeks certification of the creation of a dwellinghouse, which must include the use of the structure as a dwellinghouse, claiming that it has been used as such since substantial completion and is now immune from enforcement by virtue of section 171B(2) of the 1990 Act, which for the purposes of this appeal applies a 4-year period for immunity from enforcement. However, section 171B(2) only applies to a building that has changed use to use as a dwellinghouse. Had that been the case then its use would have become immune from enforcement after 4 years. But in this case, if it is a building now, no other use has been made of it, on the appellant's own evidence. The Supreme Court established in the case of *Welwyn Hatfield*² that in circumstances where an unauthorised building is used from the outset as a dwellinghouse its use is subject to the 10-year immunity period specified in section 171B(3). Since 10 years has not elapsed since the dwellinghouse use is said to have commenced, it could not be lawful on the basis of immunity from enforcement.
6. A delineated area around the initial mobile home and then the claimed dwellinghouse is said not to have changed since 2012. It is said to have been curtilage, but curtilage is not a use of land, it is land that is part and parcel of a building, but importantly it is not development. I can presume that what is sought is confirmation that the relevant land use has materially changed from an agricultural use and that that change of use is now immune from enforcement action, having been so used for more than 10 years. However, while little may appear to have changed on the ground, the uses claimed from 2012 are materially different, one being a use of the land for the stationing of a caravan for residential purposes, and the other being use ancillary to the use of the purported dwellinghouse as such. If, as the appellant claims, the existing structure became a building used as a dwellinghouse in 2016, that would, in my judgement, have commenced a new

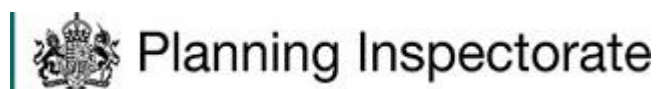
² Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council [2011] UKSC 15

chapter in the planning history of the relevant land, and so the period of former use for the stationing of a caravan for residential purposes could not contribute to the establishment of use rights for the dwellinghouse use of the land.

7. For these reasons I conclude that it has not been demonstrated, on the balance of probabilities, that the use of the existing structure as a dwellinghouse, if that is what it is, along with the associated parcel of land, is immune from enforcement action. As such, the refusal of the Council to issue a certificate of lawful use or development for the creation of a permanent dwelling with denoted domestic curtilage was well founded, and the appeal on this matter cannot succeed.
8. However, as noted above, the use of the yard area and barn for the storage of items relating to agriculture and an Engineering business, the retention of a barn for a mixed Agricultural and engineering use and the erection of a small shed used as a pump house and store is, on the balance of probabilities, now immune from enforcement action and hence lawful by virtue of section 191(2) of the 1990 Act. The appeal succeeds in part, and I will therefore exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and grant a LDC for the matters shown to be lawful.

Paul Dignan

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 16 May 2023 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 black 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 use and operational development are immune from enforcement by virtue of sections 171B(3) and 171B(1) of the 1990 Act, having regard to the transitional provisions specified in SI 2024/452 reg.5.

Signed

Paul Dignan

Inspector

Date: 29th January 2025

Reference: APP/D1265/X/24/3344283

First Schedule

The use of the yard area and barn for the storage of items relating to agriculture and an Engineering business, the retention of a barn for a mixed Agricultural and engineering use and the erection of a small shed used as a pump house and store.

Second Schedule

Land at Moonridge Farm, Main Road, BEAMINSTER, DT8 3HP

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 lawful, on the certified date and, thus, was 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: 29th January 2025

by Paul Dignan

Land at: Moonridge Farm, Main Road, BEAMINSTER, DT8 3HP

Reference: APP/D1265/X/24/3344283

Scale: Not to Scale

