



Appeal Decisions

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

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal A: Ref APP/P2114/X/24/3337850

Woodhouse Farm, Mount Road, East Cowes, Isle of Wight PO32 6NU

- 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 IOW Water (IOW.Water.com) against the decision of Isle of Wight Council.
 - The application Ref 23/01965/CLPUD, dated 3 November 2023, was refused by notice dated 4 January 2024.
 - The application was made under section 192(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 bottling of water extracted from existing farm borehole.
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Appeal B: Ref APP/P2114/X/24/3343291

Woodhouse Farm, Mount Road, East Cowes, Isle of Wight PO32 6NU

- 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 IOW Water (IOW.Water.com) against the decision of Isle of Wight Council.
 - The application Ref 24/00110/CLPUD, dated 19 January 2024, was refused by notice dated 15 March 2024.
 - The application was made under section 192(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 bottling of water extracted from existing farm borehole.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the proposed use which is considered to be lawful.

Procedural Matter

3. It was not necessary for me to conduct a site visit to determine these matters of lawfulness. The decisions have been made upon the written appeal submissions, with no prejudice to any party.

Main Issues

4. The main issues in the appeals are whether or not the Council's decisions to refuse the respective LDC applications were well-founded.

Reasons

Background and Context

5. Both appeal schemes (A and B) propose the use of agricultural storage buildings on a working livestock farm for an automated bottling plant (and associated storage) to bottle water extracted from an existing farm borehole. The borehole historically provided all the water to the farm, and the pumping equipment remains in situ.
6. It is planned by way of the appeal schemes to bottle the water on site and sell it as 'IOW water' - a premium product for distribution. To this end, it is envisaged that 2 van trips a day (and no more) would be generated with respect to a bottling operation which would be undertaken by existing farm employees from Monday to Saturday (0800 – 1800).

Appeal A

7. Under this proposal, the use would involve 278m² of floorspace. It is argued that the use would be lawful as it would not constitute development requiring planning permission.
8. Although I note the appellant's argument that the floorspace for the new use would only constitute less than 6.1% of the existing and permitted buildings on the 140 acre farm, I find as a matter of fact and degree that a use of this nature (and of this scale which, although not substantial, is significant) is one which could not be reasonably said to be ancillary to the primary agricultural use of the land (or, indeed, *de minimis*). It has an industrial character of use which is materially different to an agricultural one, and there is no clear functional connection.
9. Accordingly, I conclude on this appeal that the proposal would constitute a material change of use of the land for which lawfulness would depend on planning permission. The proposal did not benefit from any such planning permission on the date the application for the LDC was made.
10. 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 in Appeal A 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 as amended.

Appeal B

11. This proposal is identical to that in Appeal A, save that the use would involve 149m² of floorspace.
12. Article 3(1) and Schedule 2, Part 3, Class R(a)(iv) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) provides general planning permission for development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within Use Class E of Schedule 2 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
13. One such permitted change of use to Use Class E is use for any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit (Use Class E(g)(iii)).

14. The Council takes issue that the bottling operation (though not the extra van movements) would cause noise that would be detrimental to the amenity of 'any residential area' and refers to an internal email received from its Senior Environmental Health Practitioner (EHP) to support that position.
15. However, the EHP's note is rather equivocal and, in concluding, says "*I can only advise that I cannot conclude that there would be no detriment to residential amenity by the proposed use but that is not to say that there would be.*"[my emphasis]. He also says that "*...odour, smoke, fumes and possibly vibration would be minimal or of no concern at all.*" I therefore find the Council's argument that the proposed use would not fall within Use Class E(g)(iii) to be weak.
16. Conversely, the appellant makes a strong case that the particularities of the proposed use could be carried out in any residential area without detriment. Detail has been provided (particularly in *Statement of Case V3*) in effective support of that case. I am particularly persuaded by the sole use of plastic bottles (implicit in the referenced Health and Safety Executive Guidance that this is the most effective 'Sound Solution' in reducing bottling line noise) and conclude that this particular industrial process is one falling within Use Class E(g)(iii).
17. Further, it appears that none of the limitations or conditions relating to the permitted change of use under Class R of the GPDO prevent the appeal scheme being lawful under those provisions. As the cumulative floor space of the buildings changing use within the established agricultural unit do not exceed 150m², no prior approval application to the Council is necessary (R.3.(1)(b)) and the requirements have already been met as regards certain information being provided to the Council (R.3.(1)(a))¹.
18. 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 use in Appeal B 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 (i) the date the site will begin to be used for any of the flexible uses;
(ii) the nature of the use or uses; and
(iii) a plan indicating the site and which buildings have changed use.



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 19 January 2024 the use 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:

It benefits from general planning permission afforded by Article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Andrew Walker

Inspector

Date 10 February 2025

Reference: APP/P2114/X/24/3343291

First Schedule

Bottling of water extracted from existing farm borehole (with the use described in *Woodhouse Farm - Bottling Plant CLUD appeal - Statement of Case V3* submitted by the appellant in this appeal)

Second Schedule

Land at Woodhouse Farm, Mount Road, East Cowes, Isle of Wight PO32 6NU

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: 10 February 2025

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Land at: Woodhouse Farm, Mount Road, East Cowes, Isle of Wight PO32 6NU

Reference: APP/P2114/X/24/3343291

Scale: Do not scale

