



Appeal Decision

Hearing held on 5 December 2023

Site visit made on 5 December 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 04 March 2025

Appeal Ref: APP/G2245/X/22/3309009

Land Adjacent to The Rising Sun Pub, Cotmans Ash Lane, Kemsing, Sevenoaks TN15 6XD

- 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 Mr Alex Torikian against the decision of Sevenoaks District Council.
 - The application ref 21/03865/LDCEX, dated 23 November 2021, was refused by notice dated 8 March 2022.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is described as 'use of land and buildings for domestic recreation'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I queried the extent of the appeal site with the parties at the hearing as the submitted Block Plan did not appear to clearly delineate the appeal site. The parties confirmed that the submitted Title Plan for title number K529382 properly represented the area of the appeal site, and the Council confirmed it had assessed the application on this basis. I see no reason to take a different view and shall consider the appeal on this basis.
3. The application form describes the existing use as 'Use of land and buildings for private recreation' under section 4 and '*use of land and buildings for domestic recreation*' under section 5. The Council has used this latter description within its decision notice. However, the dictionary definition of the word 'domestic' refers, in part, to the '*relating to the running of a home or to family relations*' and generally therefore, it is used to describe a use associated with a dwellinghouse.
4. Section 191(4) of the Act allows the local planning authority to modify the description of the existing use or operation. At the hearing, I sought views of the parties regarding the description of the existing use. The appellant explained the description of the existing use was not intended to incorporate any residential use associated with a dwellinghouse nor was it a use associated with visiting members of the public. The parties agreed a more accurate description of the existing use would be 'use of land and buildings for private

recreation' which is also described in the application form. I shall therefore consider the appeal on this basis.

5. The appellant has provided detailed plans for buildings at the site, as well as providing some detail regarding their construction or existence in the site prior to the appellant taking ownership of the site in 2014. However, the construction of a building is operational development. The appellant is not seeking a determination that the construction of the building/s is lawful, rather they are seeking a determination that their use would be lawful. If the appellant is able to demonstrate the use of the land continued without significant interruption for at least 10 years, so long as those buildings were not used for a different purpose, there will have been no material change in the use of the land and no development in this respect.

Main Issue

6. The main issue is whether the Council's refusal to grant a LDC would have been well founded.

Reasons

7. An application under section 191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land is lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) no enforcement action may 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 ii) they do not constitute a contravention of any enforcement notice then in force.
8. The main thrust of the appellant's case is that the appeal site has been in use for private recreation since 1 August 1986 and, despite a change in ownership of the site in 2014/15, the site has consistently been used in the same manner. As such, the case will turn on whether the material change of use of the land to a private recreational use began on or before the 23 November 2011 and continued for a period of ten years thereafter without significant interruption (the Relevant Period).
9. In an LDC appeal, the onus of proof is firmly on the appellant to make out their case, on the balance of probabilities. The appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. Planning merits form no part of the assessment of an application for a LDC. The alleged use must be considered in light of the facts and the law.

Site characteristics and observations

10. At the time of my site visit, I saw that the appeal site comprised a substantial parcel of grassland and meadow with some areas of tree planting and a number of single storey buildings and structures. The edges of the site are defined by a mix of hedgerow and wire fencing, however, I saw that there were limited physical boundaries within the interior of the site, such that the site was largely open.

11. With reference to the submitted Block Plan, I noted the following about the items noted on the plan:-

A – was a small dilapidated structure, with part wooden and part open sides. It included a low height roof and contained children’s plastic stools and chairs and had the appearance of a makeshift playhouse.

B – a shipping container, which was being used to store a number of items including roofing felt, chicken wire and some wooden logs.

C – a largely open-sided structure being used to store wooden logs and large bags of sticks. A ‘portaloo’ was positioned to the side. Piles of cut wood including a large quantity of mature tree trunks were scattered around in rough piles nearby.

D – An enclosed four sided structure constructed from a mix of wood and corrugated metal sheet and containing two doors to its northern elevation. It contained the parts of a number of toilets and a number of sinks that had been partly fitted inside together with a number of bike ramps.

E – a small sized wooden building set on top of concrete blocks with windows and doors to its front. No veranda nor hardstanding was evident¹ and it had the appearance of a small summerhouse type building. The structure was being used for storing several items including outdoor chairs and cushions and some toys, including a paddling pool.

Between D and E there was a collection of mature logs/tree trunks, some of which were breaking down and had the appearance of having been there for a long period of time, with other vegetation growing in between.

F- a three-sided barn type building containing a sizeable picnic table with benches and lighting. An additional table was situated in the open air a short way beyond the open side of the structure together with a BBQ. An outdoor sink washing area was also available as well as shelves and racks containing crockery.

Between E and F (in the area of the former Sand School, which I will come onto shortly) there was a maintained grass area containing an assortment of predominantly wooden play equipment including swings, climbing frame and slides.

G – a fully enclosed building erected on a hard base with door and a number of windows. It included a tiled floor, lighting and a log burner together with a ‘home bar’ and several high bar stools. A number of freestanding gas stoves were present together with a stovetop kettle.

H – a substantial, partly open sided wooden and metal building being used to store a number of items including a wheelbarrow, cement mixer, generator and quad bike. A ‘Ford’ tractor was parked outside.

I, J and K – were wooden buildings, each constructed with a corrugated metal roof, stable door and a number of windows. The doors were locked with a padlock. All included wooden interior walls and flooring. Item K included a shallow height first floor mezzanine with ladder and the building contained a

¹ Comments of an interested party suggest that item E was a newly erected (on hardstanding) large summerhouse with veranda.

bed settee with pull out bed below, dining table and chairs and a log fire. Item J also included a roof light window and contained a set of bunk beds and a bed settee with pull out bed below. It contained plastic outdoor chairs and table, items of picnic crockery and washing up bowl, a double sized mattress, a highchair and other miscellaneous items.

I -was locked and access inside was not provided.

L – a dilapidated wooden structure which was mostly open-sided and cannot, in my view, be described as a touring caravan².

The Planning Unit

12. In terms of a starting point, it is necessary to consider the relevant planning unit, since the general rule is that the materiality of change should be assessed in terms of the whole site concerned. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
13. The appellant together with three others (the “co-owners”) acquired the appeal site in around 2014/2015 and they share the land largely without any subdivision. The majority of the structures on the site are either partly open or are unlocked, save for items I, J and K which are lockable and are stated to have been provided as a replacement for the pre-existing stables buildings in around May 2019. Notwithstanding that they are capable of being locked (and were locked at the time of my visit), I was informed that this is to provide security for the contents and a space to store the personal belongings of each of the co-owners and their families and a space to retire to during the day and sleep overnight.
14. Prior to 2014/15, the appeal site was in the ownership of the former owner, who acquired the site in 1986. Aerial imagery provides some help to understand how the site was divided up over time. The appellant and co-owners explained at the hearing that they visited the site as young children after the former owner purchased it. They went on to explain that when they visited the site as young children, horses were generally kept within the lower part of the site at the northern end (the ‘Bottom Part’) and goats and cows were kept at the higher part of the site at the southern end (the ‘Top Part’). This accorded with the recollection of the former veterinarian. It also largely corresponds with the layout shown upon the drawing date stamped 11 August 1994 and which formed part of Planning Permission 94/00891/HIST and the layout shown within a number of aerial images (dated January 1990, January 2003, April 2007, March 2008, September 2012 and May 2013).
15. It was stated at the hearing that the buildings and structures on site supported the welfare of the animals kept on the site. In a planning application³ for the ‘retention of a sand school non post and railed with banked grass areas at sides’ in August 1994, the site is shown on the submitted drawing to be laid out as three paddocks, a sand arena, goat enclosure, goat paddock, hay barn, shelter and chickens. Within a number of photographs submitted with the appeal, post and wire fencing can be seen. However, it is not unusual to use fencing to limit where horses and other livestock graze within a wider site, nor

² Comments of an interested party suggest that item L was a touring caravan.

³ Planning Reference: 94/00891/HIST

to enclose a Sand School where horses/ponies are being trained and ridden around.

16. The submitted aerial image dated July 2014 appears to show that, for the most part, internal fencing associated with the former owner's use of the site had been removed by that date. Subsequent aerial images dated July 2017, September 2018, April 2020 and June 2021 show a similar picture and provide support to the appellant's account that internal fencing was not necessary since no animals were kept on the site during the appellant's period of ownership.
17. Other 'recreational' activities undertaken by the children and visitors to the site during the former owner's period of ownership are stated to have been carried out throughout the site, with no area being out of bounds.
18. On the basis of the evidence before me and on the balance of probabilities, in terms of physical layout of the site and the manner in which the activities are stated to have been carried out, the site has functioned as a whole and has remained a single unit of occupation. Thus, I find as a matter of fact and degree that the planning unit has been the entire appeal site from 1986 until the present day.

2014/15-2021: The appellant's ownership of the site

19. The appellant's written evidence explains that, together with the other co-owners they '*have continued to use the land and buildings in the same recreational manner for our own families*'. It is not clear from the written evidence what is meant by 'the same recreational manner'.
20. At the hearing, the appellant set out the activities that have been conducted on the site during their period of ownership. This includes:- shooting, archery, riding bikes, playing with nature, making dens and artwork and playing games such as 'manhunt', football, baseball and camping. The appellant explained that the children like to 'roam' about and play in the buildings. They build fires to sit around and to cook over or have BBQs. On limited occasions, kid sized quad bikes have been used on the site, although a co-owner explained at the hearing that this has not happened for some period of time.
21. Whilst the written evidence talks about a horse at the site, it was clarified at the hearing by the appellant that a pony had been at the site on only one occasion during their ownership of the site. The appellant suggests that, while they do not have horses at the moment, some of their girls do ride horses and may well want their own at some point in the near future. However, an appeal under section 191(1)(a) is concerned with how the site has been used, rather than how a landowner may wish to use the site in the future.
22. The appellant explained that no animals have been kept at the site at any point during the Co-owners' period of ownership due to having insufficient time to ensure the upkeep of animals and also, in part, due to the likelihood of animals eating vegetation, which they have allowed to become more established. Areas of planting have been introduced, including groups of young trees and a meadow within the bottom part of the site has been re-established.
23. It was explained that during the warmer summer months, the co-owners and their respective families spend time at the site on most weekends and their visits to the site tend to coincide with each other such that they regularly spend

time socialising together as a group. Their visits to the site are more sporadic in the inclement winter months.

24. During the hearing it was explained that items I, J and K, which were formerly the original stables buildings, were altered over a period of some six months by 'patch filling' the original base in sections and replacing the frame, walls and roof. The appellant and co-owners explained that those works were largely completed by approximately May 2019, with those buildings subsequently being units that the families could retire to, particularly during inclement weather, and as somewhere to sleep overnight.
25. When queried about the duration and frequency that they would sleep within these structures, I was advised they had been 'used since their refurbishment and over the better months they would be there most weekends'. However, sleeping within the confines of a building is not a camping nor a recreational use and it differs to the use of a caravan. Furthermore, an interested party suggests that, the current owners initially camped in tents and had fun with their children on occasional weekends in the summer. It is not clear to me that the occasional use of the site for camping is comparable to regular occupation of buildings I, J and K.
26. My attention has been drawn to the presence of complete large tree trunks and smaller logs being stored on the site for which it is suggested by an interested party that the site has been used for the storage of business goods/materials. At the hearing, it was explained that a number of the co-owner's were in the business of tree surgery and the trees and logs on site were as a consequence of 'spill over' from their tree surgery work with trees being brought to site, cut down and stored within the log store (Item C).
27. Notwithstanding the explanation that those trees are used as fuel for the on-site log burners and campfires and that some logs have been used for landscaping and to provide habitat areas, given the substantial volume of cut logs within the log store and larger tree trunks more widely within the site, I consider it unlikely that their storage would be incidental to the recreational use of the site.
28. Significantly, the appellant's period of ownership falls short of the Relevant Period at the date of the LDC application. Since the main area of dispute is that the previous owner's use was lawful and a material change of use has not occurred and since evidence dating back to 1986 has been provided I shall therefore consider the alleged use of the site together with the former use of the site to consider whether those uses are materially similar and therefore ascertain whether any other ten-year period can be established.

1986 – 2014: The previous owner's use of the site

29. Although the appellant did not purchase the site until 2014 at the earliest, evidence regarding the use of the site between 1986 and 2014 has been provided by the previous owner, the previous owner's daughter, the appellant and other co-owners of the site and a former veterinarian, who visited the site.
30. In a letter dated 11 Nov 2021, the former owner describes their use of the land as being for '*recreational pursuits*' which involved '*equestrian activities, camping, play areas for the children, camps, entertaining and the keeping of*

goats, cows/calves and horses as pets'. The former owner did not attend the hearing.

31. Similarly, in a letter from the former owner's daughter, dated 20 November 2021, they set out that foals, chickens, sheep, goats, cows, calves and horses were kept at the site. In the same letter, it goes on to set out a number of activities that were carried out on site including *'caravan sleepovers with friends and family at the weekends and during the holidays, playing/decorating/sleeping within a wendyhouse, pond dipping, clay modelling, play within the pond, BBQ parties, sheep/goat sheering demonstrations, den building, campfires, roasting marshmallows, singing, having a mini marathon, mini hurdles, treasure/scavenger hunts and target practice games. Friends visited the site for 'pony days' and to spend time with the animals, feeding and brushing the goats and cow, mucking out, grooming and riding the ponies, cleaning tack'*.
32. The former owner's daughter states that she would spend whole holidays at the site and every weekend. They describe 'regular socialisation' taking place at the site 'until at least 1999, but as we became older teenagers we developed other interests and my mother did not replace our pets/ponies -she gradually wound down the activity at the property'. It is stated that no animals were kept on the site after April 2009. The former owner's daughter did not attend the hearing.
33. The appellant recalls visiting the site with their sister, friends and other local residents during the previous owner's occupation of the site, and making a tree house and building a pond. They also describe helping with the animals on site making camps and playing within the various barns, stables and shelters. At the hearing, the other Co-owners explained their recollections of visiting the site as children. They recalled building and playing in a pond, playing in the on-site buildings and woods as well as building dens and campfires. In terms of frequency of visiting the site, their visits as children to the site were in the region of 'half a dozen times a year'.
34. The father of two of the co-owner's, a retired vet, set out that during this period he visited the site 10-12 times per year. Sometimes children would be present and at other times when they were at the site to undertake veterinarian services, it would only be the former owner who was present at the site.

Keeping of animals

35. The evidence explains that the appeal site was purchased with the intention of providing a place for the former owner to keep their pet animals. It is put to me that the keeping of animals falls within the ambit of a private recreational use of the site and it was tantamount to a 'hobby farm'. There is limited evidence regarding the numbers of animals that were kept at the site, although at the hearing it was suggested there was one cow, two goats and a number a chickens, albeit these numbers varied. The former owner's daughter's written evidence explains that *'we acquired more horses and livestock pets from the then Sevenoaks Animal Market'*. I was also told that a calf was born and subsequently slaughtered for personal consumption of the owner.
36. Agriculture is defined within section 336 of the Act as including *'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or*

fur, or for the purpose of its use in the farming of the land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly'.

37. Irrespective of the animals being considered as 'pets', the evidence points to a variety of animals being kept on the site between 1986 and April 2009. In addition, whilst it was only on infrequent occasion that the cow produced offspring, it nonetheless did do so on at least one occasion. Given the presence of hens, I take the view that it was likely that eggs were produced. I note the calf was slaughtered for personal consumption and, whilst there is little evidence to say what happened to the eggs, it is likely these were also for personal consumption by the former owner.
38. Whilst it is put to me that the animals were not kept for the purpose of a trade or business and none of the animals were ever sold, this matter is not determinative when considering whether an agricultural use has occurred. On the basis of the evidence before me, the keeping of animals on the site would have been, on the balance of probability, an agricultural use of the site, irrespective of whether those animals were considered by the owner to be their pets.
39. In addition to livestock, the former owner is stated to have also kept around a dozen ponies. The definition of agriculture includes the use of the land as grazing land and so the grazing of horses can be considered an agricultural use. However, the keeping of horses which involves activities other than just putting horses out to graze would not fall within the definition of agriculture.
40. Planning permission⁴ was granted for the 'retention of a sand school non post and railed with banked grass areas at sides' in August 1994. The former owner confirms it was built soon afterwards, which contradicts the reference to 'retention' in the description of development. Nonetheless, reference is made to straw being put down to provide a reasonable surface and the submitted photograph 1, which although undated is stated to have been taken in 1992 or 1993, shows a horse with tack being ridden.
41. The former owner refers to horse training being carried out within the sand school. Whilst temporary planning permission for a period of ten years was granted, the former owner's written evidence indicates that the Sand School was not removed at that point. The former owners' daughter also describes 'running our own private pony gymkhanas for friends and family', mucking out, grooming, riding ponies and cleaning tack.
42. Additional photographs without any date stamp have been provided. Photograph 2 is believed by the former owner to have been taken in about 1995, photographs 3 and 4 taken in 1996 approximately and photograph 7 is thought to have been in the summer of 1997. They show children in riding clothing, horses/ponies in riding tack and in some, the horses/ponies can be seen to be ridden. Photograph 10 is stated to have been taken in 2002 and to show a child during a dressage test in the sand school.

⁴ Planning Reference: 94/00891/HIST

43. Evidence of an interested party suggests that the former owner carried out horse riding lessons and gymkhanas. The interested party did not attend the hearing and as their written evidence is not witnessed, this limits the weight that I afford their evidence. Nevertheless, their written representations detailing horse riding that took place at the site appears to be consistent with the photographs that have been provided as part of the appeal. In addition, there is also some suggestion that the former owner charged for these which is disputed by the appellant.
44. Written evidence of a co-owner states 'she certainly may have given riding lessons and allowed others to use the sand school but none of it was ever, as far as we can remember, for serious commercial gain'. An interested party's account is that the former owner taught horse riding to other people's children including their own daughter whom is stated to have had a weekly lesson for which they paid £5. They note that their daughter is one of the children within one of the submitted photographs. The interested party refers to taking part in organised gymkhana events which included a BBQ and for which payment was taken.
45. In light of the above, the evidence before me points to there being horses/ponies kept at the site and people coming to the site for the purpose of horse riding and teaching. Infrastructure in the form of a Sand School was constructed and used to carry out the horse riding activity. This points to there being an equestrian school at the site. Irrelevant of whether any payment was taken for lessons or gymkhana type events, this would have been an equestrian use of the land.

The 'other activities'

46. The written evidence of the former owner and their daughter refers to 'sleepovers'. The former owner's daughter states there were 'Wendyhouse sleepovers' and 'caravan sleep overs' with friends and family at the weekends and during holidays. Reference is made to a caravan being kept on site for sleeping accommodation which I note can be seen in the background of a number of the submitted photos which provides support to a caravan being positioned on the site.
47. Although 'sleepovers' are stated to have taken place 'quite regularly', there is little detailed evidence as to what is meant by 'quite regularly' and whether this occurred throughout the whole period of the former owner's ownership or a shorter period of time. As such, there is little to show that the caravan or Wendyhouse were used in a meaningful way for any period of time.
48. The appellant and co-owners refer to camping at the site during their period of ownership which is corroborated to an extent by the comments of interested parties. One interested party comments that '*it is somewhere where people come for the weekend with their children and stay over*'. Another interested party states '*whilst they were camping in tents and having fun with their children on occasional weekends in the summer*'.
49. With regards to the pond dipping, clay modelling, den building, campfires, mini marathon and hurdles, treasure hunts and target practice games, which are stated to have taken place during the previous owner's period of ownership, the information is limited in terms of the frequency over which these activities were carried out and over what period of time these took place. In particular,

the daughter of the former owner notes that 'as we became older teenagers we developed other interests' and 'she (the mother) gradually wound down the activity at the property'.

50. Given that the keeping of a variety of animals would have likely required a person to have frequently visited the site to provide care for those animals, it seems likely that the former owner and her family would have regularly been present at the site. However, what has not been demonstrated to me is that the activities that did not involve an animal, such as making dens for instance, were not an incidental use of the site whilst the former owner was carrying out tasks of tending to the animals which would have been associated with an agricultural or equestrian use of the site.
51. The submitted photographs purport to show some of the activities that were carried out on site, however, as several of the photographs show the sand school and horses/ponies being ridden and others show several children in riding clothing and hats, this points to there being an equestrian use of the land rather than recreation. Photograph 5 shows a group of friends in fancy dress clothing and photograph 8, which includes several motor vehicles and a number of adults and children sat on outdoor garden chairs purports to show a summer BBQ in 1997.
52. However, the comments of an interested party suggests that BBQs were carried out as part of horse riding gymkhana events. From the photographs I note that a riding hat can be seen on top of a bonnet of one car pertaining to the BBQ and a number of the children in fancy dress can also be seen wearing riding hats. Photographs 7 and 9 show children in riding clothing and riding hats which points to an equestrian activity and the wearing of rosettes and medals is suggestive of some sort of competition such as a gymkhana having taken place. It has therefore not been shown that these would not be an incidental part of an equestrian use.
53. Reference was made to a two storey 'Wendy House' with internal stairs which was positioned close to the highway and it was put to me that a tree house is clear evidence of long term recreational use. However, there is little detailed information about when it was built and the frequency and duration the Wendy House was used. A planning application⁵ for the retention of one tree house and one cow shelter was refused in June 1995 and I heard that the treehouse was subsequently removed after that decision was made. No tree house was evident at my site visit.

Conclusion regarding use of the site between 1986 and 2014/15

54. On the basis of the evidence before me, I find on the balance of probabilities that the site during the former owner's period of ownership would have been a mixed use comprising primary uses of agriculture and equestrian. Similarly, the 'other activities' alleged, which do not directly involve an animal, have not been demonstrated to be a primary use of the land. The evidence is not sufficiently clear and unambiguous to show that the 'other activities' were not incidental to agricultural and/or equestrian uses of the mixed use of the site.

⁵ Planning Reference: 95/00367/HIST

Whether a material change of use occurred after 2014

55. The evidence points towards animals and horses not having been kept at the site to any material extent since 2014/15. In my view, there are significant differences between the use of the site by the former owner between 1986 and 2014, which, as set out above, is likely to have been a mixed use comprising primary uses of agriculture and equestrian use, with incidental private recreational use and that of the appellant's alleged use of the site for private recreation.
56. The buildings are no longer used in association with animals and the primary uses (agriculture and equestrian) of the site. Instead, they are used for a variety of activities including eating, sleeping, entertaining and socialising together. The character of the use of the site, in my judgement, materially changed following the appellant's purchase of the site in around 2014/15. The site is no longer in a mixed use of agriculture and equestrian use: these uses had both ceased and, what appears to have been incidental activities have now become the primary use of the site. The use of the site for these activities has been facilitated by the rebuilding of a number of buildings and the introduction of paraphernalia, such as play equipment.
57. While the buildings may not possess the facilities required for day-to-day living, the use of the site, and the introduction of the play equipment gives the site a domestic character. Camping is stated by the appellant to have been undertaken at the site, however, there is limited information about this. Furthermore, the provision of sleeping accommodation within items I, J and K is different in character to a 'camping use' and since it has been carried out only since those items were refurbished, which the appellant estimated to be in around 2020, this falls short of any relevant period.
58. I consider there are significant differences between the use of the site as a mixed use of agriculture and equestrian with incidental recreational use by the former owner and the use of the site by the current co-owners for private recreation and overnight sleeping accommodation. As such, I consider that it has not been demonstrated that the land and buildings have been in a private recreational use for the relevant period. While the mixed use comprising agriculture and equestrian activities may have been lawful, the character of the uses alleged by the appellant are materially different to the use of the site by the former owner.
59. Thus, I find that the appellant has not demonstrated, on the balance of probabilities, that the use of the appeal site for private recreation began on or before 23 November 2011 and continued for a period of ten years thereafter without significant interruption and so the appeal must fail.
60. 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 'use of land and buildings for domestic recreation' was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

E Brownless - INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andy Stevens (Agent)	ASP Planning and Development Consultancy
Shannon Fenlon (Agent)	ASP Planning and Development Consultancy
Alex Torikian	Appellant and co-owner
Ross Robinson	Co-owner
Daniel Rose	Co-owner
Grant Robinson	Co-owner
Trevor Robinson	Former veterinarian, witness for the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Hayley Nixon	Senior Planning Officer, Sevenoaks District Council
Kate Drury	Planning Officer, Sevenoaks District Council