



Appeal Decisions

Site Visit made on 29 April 2025

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 June 2025

Appeal A Ref: APP/A3010/C/24/3346474

Fox Covert Farm, Fox Covert Lane, Misterton, South Yorkshire DN10 4ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Timothy Hollingshead against an enforcement notice issued by Bassetlaw District Council (the LPA).
- The notice was issued on 6 June 2024.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a dwelling-house.
- The requirements of the notice are:
 1. Demolish the dwelling-house, including any hardstanding associated with the dwelling-house.
 2. Remove from the Land all materials as a result of the demolition of the dwelling-house, including any hardstanding associated with the dwelling-house; and,
 3. Remove from the Land any domestic paraphernalia associated with the residential use of the Land.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: No further action taken.

Appeal B Ref: APP/A3010/X/23/3335507

Land and Buildings, Fox Covert Lane, Misterton, Nottinghamshire DN10 4ER

- 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 Timothy Hollingshead against the decision of Bassetlaw District Council.
- The application ref 23/00992/CTL, dated 8 August 2023, was refused by notice dated 17 November 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 retention and continued occupation of 1 no dwelling.

Summary of Decision: The appeal is allowed, and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Appeal C Ref: APP/A3010/X/23/3335510

Land and Buildings, Fox Covert Lane, Misterton, Nottinghamshire DN10 4ER

- 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 Timothy Hollingshead against the decision of Bassetlaw District Council.
- The application ref 23/00997/CTL, dated 11 August 2023, was refused by notice dated 21 November 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 retention and continued use of 7 no agricultural buildings.

Summary of Decision: The appeal is allowed, and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Appeal D Ref: APP/A3010/X/24/3347716

Fox Covert Farm, Fox Covert Lane, Misterton, Nottinghamshire DN10 4ER

- 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 Timothy Hollingshead against the decision of Bassetlaw District Council.
- The application ref 24/00391/CTL, dated 4 April 2024, was refused by notice dated 30 May 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 to establish that planning permission 17/01031/FUL is extant and lawful.

Summary of Decision: The appeal is allowed, and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Procedural Matters

1. The appeals were initially to be determined through the Inquiries procedure. The Inquiry was scheduled to open on 28 January 2025. However, due to the unavailability of a main party, it was postponed to 29 April 2025.
2. On 22 April 2025, the LPA and the appellant submitted a signed Statement of Common Ground in which the LPA set out it no longer contested any of the appeals. Consequently, with the agreement of the parties, the procedure for the appeals was changed to written representations.
3. On 14 May 2025, the LPA wrote to those served with a copy of the notice, including the appellant, to inform them that the notice had been withdrawn in exercise of its powers under S173A of the Act. As a result, I take no further action in respect of Appeal A.

APPEAL B

Procedural Matters

4. The “retention and continued occupation” of a building does not amount to development under S55 of the Act. It has been agreed with the parties that the appeal should proceed on the basis that an LDC is sought for the erection of a dwellinghouse.

Main Issue

5. The main issue is whether the LPA’s decision to refuse the LDC application was well-founded, with particular regard to whether the erection of a dwellinghouse was lawful at the date the LDC application was made.

Reasons

6. S191(2) of the Act states that 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.
7. S171B(1) of the Act sets out that, where there has been a breach of planning control consisting in the carrying out without planning permission of building

operations no enforcement action may be taken after the end of the period of ten years beginning with the date on which the operations were substantially completed. The time limits in S171B have nevertheless recently been amended with transitional arrangements in place¹. In this case, the relevant period is four years beginning with the date on which the building operations were substantially completed.

8. It is necessary, therefore, for the appellant to demonstrate, on the balance of probabilities, that the erection of a dwellinghouse was substantially completed on or before 8 August 2019.
9. The appellant's evidence includes several photographs and documents which pre-date the relevant date, in addition to Statutory Declarations from the appellant, his former planning advisor, his bookkeeper, his former business partner and an employee of his.
10. The evidence concludes that the building was watertight, heated, furnished, had a fully installed kitchen and bathroom and had been inhabited since Christmas 2018. I agree with the appellant that, whilst previous planning applications² in 2019 and 2022 and previous appeal decisions in 2021 and 2023³ referred to the building as partially complete, they did not apply the correct tests laid down in *Sage*⁴ since it was not a relevant matter for either the LPA or the relevant Inspectors. To that end, such descriptions do not point towards ambiguity in the evidence of the appellant.
11. The Council accepts that the building was substantially completed by 8 August 2019. I find the appellant's evidence sufficiently precise and unambiguous.
12. As a result, the appellant has demonstrated, on the balance of probabilities, that the erection of a dwellinghouse was substantially completed on or before 8 August 2019. Moreover, there is no evidence that the erection of a dwellinghouse was contrary to the requirements of any enforcement notice then in force. The LDC application pre-dates the issue of the notice in Appeal A.
13. Consequently, I find that at the date the LDC application was made, the erection of a dwellinghouse was lawful within the meaning of S191(2) of the Act.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the LPA's refusal to grant a certificate of lawful use or development in respect of the erection of a dwellinghouse was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under S195(2) of the Act (as amended).

¹ Town and Country Planning Act 1990 as amended by Levelling-up and Regeneration Act 2023 (s115(1)(a)) and The Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024 (Part 3(3)(b) and Part 3(5)(a)).

² LPA Refs: 19/00890/FUL and 22/01036/FUL

³ PINS Refs: APP/A3010/W/20/3255273 and APP/A3010/W/23/3314435

⁴ *Sage v SSETR & Maidstone BC* [2003] UKHL 22

APPEAL C

Procedural Matters

15. The “retention and continued use” of buildings does not amount to development under S55 of the Act. It has been agreed with the parties that the appeal should proceed on the basis that an LDC is sought for the erection of seven agricultural buildings.

Main Issue

16. The main issue is whether the LPA’s decision to refuse the LDC application was well-founded, with particular regard to whether the erection of seven agricultural buildings was lawful at the date the LDC application was made.

Reasons

17. In order for the development to be lawful in accordance with S191(2) of the Act, it is necessary for the appellant to demonstrate, on the balance of probabilities, that the erection of the seven agricultural buildings was substantially completed on or before 11 August 2019 such that no enforcement action may have been taken against it, having regard to the relevant time limits of S171B(1) of the Act; and, that the development does not constitute a contravention of any of the requirements of any enforcement notice then in force.
18. The LPA does not contest Appeal C. It says that, following further investigations after the refusal of the previous LDC application, it found photographs dated 19 March 2019 which show the seven buildings were substantially completed at that time. Whilst the photograph which is before me is not wholly in focus or clear, the appellant has nevertheless provided signed statements from themselves, a former employee, the appellant’s bookkeeper and their former business partner. In those statements, they state that the seven buildings were constructed and in use before 2018.
19. An aerial photograph dated 29 June 2019 shows all seven buildings in situ. Moreover, photographs of the completed buildings are provided, all of which are date stamped between 23 November 2015 and 9 November 2018. To that end, I am satisfied the appellant’s evidence that all seven buildings were substantially completed on or before 11 August 2019 is sufficiently precise and unambiguous, and in the absence of any contrary evidence from the LPA, should be accepted.
20. I conclude, therefore, that at the date the LDC application was made, the erection of seven agricultural buildings was lawful within the meaning of S191(2) of the Act because the time for taking enforcement action had expired and they did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Conclusion

21. For the reasons given above I conclude, on the evidence now available that, the LPA’s refusal to grant a certificate of lawful use or development in respect of the erection of seven agricultural buildings 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).

APPEAL D

Procedural Matters

22. The description for which the application sought an LDC was “to establish that planning permission 17/01031/FUL is extant and lawful.” However, S191 of the Act sets out that LDC applications can only be made to ascertain whether an existing use, operations or a breach of condition are lawful. There is no scope under S191 of the Act to establish whether or not a planning permission is extant.
23. The parties have subsequently confirmed that the LDC application was made and determined on the basis of an application under S191 for the works done to date are lawful because they were in accordance with the 2017 planning permission which has, they say, been lawfully commenced.

Main Issue

24. The main issue is whether the LPA’s decision to refuse the LDC application was well-founded, with particular regard to whether the erection of a partially constructed agricultural building comprising farm equipment store and farm workshop, facilities for hay, straw and feedstuffs storage and farm office and records storage was lawful at the date of the LDC application.

Reasons

25. Planning permission was granted by the LPA in October 2017 to retain and complete a partially constructed agricultural building comprising farm equipment store and farm workshop, facilities for hay, straw and feedstuffs storage and farm office and records storage⁵. The permission was subject to four conditions. Since permission was granted retrospectively, no time limit condition was imposed.
26. There is no dispute between the parties that the development which has commenced is that subject of the 2007 permission.
27. In terms of the conditions attached to the permission, Condition 1 requires the development to be carried out in accordance with the plans and details submitted. The appellant argues that the works done to date comply with the approved plans. The LPA does not dispute that, and I have no reason to conclude otherwise.
28. Condition 2 required details of doors and windows and Condition 4 details of works to the driveway to both be submitted to the LPA for agreement within three months of the date of the decision. Both conditions have not been complied with. However, the appellant argues that the conditions do not prohibit the commencement of development, nor do they go to the heart of the permission and are not therefore conditions precedent. The LPA no longer disagrees. Thus, I have no reason to conclude that the non-compliance with the conditions renders the commencement of the planning permission unlawful.
29. Condition 3 requires details of external materials to be agreed before any further development takes place. The appellant says that condition has not been breached because no further works have taken place since the grant of permission. The LPA does not dispute that.

⁵ LPA Ref: 17/01031/FUL

30. As a result, it seems to me that the 2007 permission was lawfully implemented and, at the date of the LDC application, the partially constructed agricultural building comprising farm equipment store and farm workshop, facilities for hay, straw and feedstuffs storage and farm office and records storage was lawful in the meaning of S191(2) of the Act as planning permission had been granted for it.

Conclusion

31. 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 erection of a partially constructed agricultural building comprising farm equipment store and farm workshop, facilities for hay, straw and feedstuffs storage and farm office and records storage 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).

FORMAL DECISIONS

Appeal A

32. No further action is taken.

Appeal B

33. 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.

Appeal C

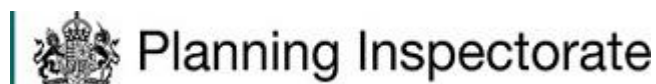
34. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful.

Appeal D

35. 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.

J Whitfield

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 8 August 2023 the operations 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 (Plan A), were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

At the date the LDC application was made, the development was lawful because no enforcement action may then have been taken in respect of it because the time for enforcement action had expired and it did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

J Whitfield

Inspector

Date: **3 June 2025**

Reference: APP/A3010/X/23/3335507

First Schedule

The erection of a dwellinghouse.

Second Schedule

Land and Buildings, Fox Covert Lane, Misterton, Nottinghamshire DN10 4ER

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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 A

This is the plan referred to in the Lawful Development Certificate dated: **3 June 2025**

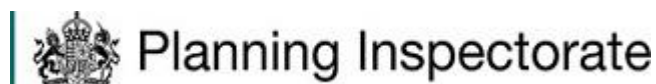
by **J Whitfield BA (Hons) DipTP MRTPI**

Land at: Fox Covert Farm, Misterton, DN10 4ER

Reference: APP/A3010/X/23/3335507

Scale: Not to Scale





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 11 August 2023 the operations 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 (Plan B), were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

At the date the LDC application was made, the development was lawful because no enforcement action may then have been taken in respect of it because the time for enforcement action had expired and it did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

J Whitfield

Inspector

Date: **3 June 2025**

Reference: APP/A3010/X/23/3335510

First Schedule

The erection of seven agricultural buildings.

Second Schedule

Land and Buildings, Fox Covert Lane, Misterton, Nottinghamshire DN10 4ER

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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 B

This is the plan referred to in the Lawful Development Certificate dated: **3 June 2025**

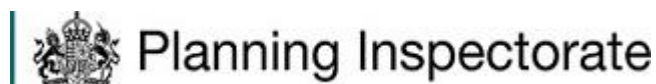
by **J Whitfield BA (Hons) DipTP MRTPI**

Land at: Fox Covert Farm, Misterton, DN10 4ER

Reference: APP/A3010/X/23/3335510

Scale: Not to Scale





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 4 April 2024 the operations 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 (Plan C), were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

At the date the LDC application was made, the development was lawful because no enforcement action may then have been taken in respect of it because planning permission had been granted for it and lawfully implemented and it did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

J Whitfield

Inspector

Date: **3 June 2025**

Reference: APP/A3010/X/23/347716

First Schedule

The erection of a partially constructed agricultural building comprising farm equipment store and farm workshop, facilities for hay, straw and feedstuffs storage and farm office and records storage.

Second Schedule

Fox Covert Farm, Fox Covert Lane, Misterton, Nottinghamshire DN10 4ER

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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 C

This is the plan referred to in the Lawful Development Certificate dated: **3 June 2025**

by **J Whitfield BA (Hons) DipTP MRTPI**

Land at: Fox Covert Farm, Misterton, DN10 4ER

Reference: APP/A3010/X/23/3347716

Scale: Not to Scale

