



Appeal Decision

Site visit made on 20 May 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2025

Appeal Ref: APP/X1545/X/23/3319560

Little Wycke Farm, Blind Lane, Mundon, Essex CM9 6PS

- 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 Mr and Mrs B & S Roe against the decision of Maldon District Council.
 - The application Ref LDE/MAL/22/00991, dated 13 September 2022, was refused by notice dated 14 November 2022.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as '*Occupation of Little Wycke Farm in breach of condition 3 of MAL/191/77 and condition 4 of 00/00353/FUL for a continuous period of time in excess of ten years.*'
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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 which is considered to be lawful.

Background

2. An Agricultural Occupancy Condition (AOC) is a planning condition placed on a property that would otherwise not have been granted planning permission to be built in the open countryside. The condition restricts the occupation of the dwelling to those working in agriculture or forestry.
3. Where a property has been occupied by a person who does not comply with the wording of the condition then the condition has been breached. Providing the breach has been occurring continuously for at least ten years, then the time limit for the Council to take enforcement action will have expired and the condition will become unenforceable.

Lawfulness for planning purposes

4. In an appeal under s195 of the Act against the refusal of a LDC the onus of proof is upon the appellant(s). In the current appeal the test of the evidence would need to show that the AOC had been breached on an uninterrupted basis since at least 13 September 2012 – otherwise known as the 'material date' - being ten years prior to the date of the application made.
5. To support the claim the appellant must demonstrate, on the balance of probability, that the AOC has not been observed. The key is that the evidence should be precise and unambiguous to this end.

6. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on the evidential facts, planning legislation and relevant case law.

Main Issue

7. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990.

Reasons

8. S191(3) says that any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if the time for taking enforcement action in respect of the failure has then expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
9. Mr and Mrs Roe, the appellants, have owned Little Wycke Farm since May 2001. Both have produced statutory declarations, sworn on 28 February 2023. In addition, there are a number of letters from persons who have had involvement with the appellants, largely in connection with Mr Roe's business ventures, namely the companies R J Roe & Sons Ltd (1991 to 2014) and, subsequently, Roe Environmental (2014 to present). Mr Roe says he bred cattle up until 2003 when, after all livestock was sold and removed from the farm, his involvement in agriculture as his main means of employment ended. Mr Roe says he took the majority of his income from R J Roe & Sons Ltd from 1991 until 2014.
10. The *Gabbitas* principle, arising from a court judgement, says that the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application or dismiss the appeal, provided that the supporting evidence itself is sufficiently precise and unambiguous. This approach has been transposed to the government's planning practice guidance
11. The Council, in taking issue with the appellants' claim that the AOC has been continually breached throughout the relevant period, refers to a planning application (ref 12/00135/FUL), submitted by Mr Roe, which proposed the replacement of obsolete pig sties and furrowing house with a replacement barn for agricultural use. This was approved in May 2012 and its construction was apparently completed in September 2012. Mr Roe says the application was submitted as he was helping cut fields with a Mr Woricker who resides locally, and with whom he had planned to start a farm contracting business on a wider scale. The barn was to be used to store related machinery which had been purchased but, around the time it was completed, Mr Woricker pulled out of the venture, and the machinery was subsequently sold off.
12. Mark Woricker has provided a letter to corroborate Mr Roe's claims in this regard, and this seems to me a credible explanation as to why the application was made. It does not necessarily suggest that Mr Roe was still mainly employed in agricultural work. Reference has been made to Mr Roe also owning a farm some three miles away, but he says that this land has been tied up in a family dispute since at least 2012, and has not been farmed since this time.
13. Since the barn was constructed both Mr and Mrs Roe say that it has been used for keeping hay for the horses they own, along with the storage of garden equipment. Both do indicate, though, that Mr Roe did continue to do a small amount of

contractual work at other nearby farms which, I understand, lasted until the middle of 2012. Roe Environmental is concerned with the disposal of both residential and commercial waste and Mr Roe drives HGVs, transporting liquid waste.

14. A number of letters in support of the LDC submission have been provided from various persons, namely Simon Rampling, Kevin Cockett, Chris Borg, Graham White, Roger Cockett, Nigel Wenlock, Robert Hendry and Donna Sims. All corroborate the appellants' claims, and several have first hand knowledge of Mr Roe's employment roles and business interests, and have referred to relevant dates. Some have also stored items within the said barn.
15. A letter has also been provided by Kevin Cornelius, an accountant, with direct knowledge of Mr Roe's businesses. He says that R J Roe & Sons Ltd provided the appellant with his main income in salary and dividends from 1991 to 2014 and, thereafter, from Roe Environmental Ltd.
16. It would appear from the evidence that, throughout the relevant period (September 2012 to September 2022), Mr Roe has not been wholly or mainly employed in agriculture. Neither has his wife, Sarah Roe, whose income is from 'Small Steps' Day Care Ltd.'
17. To summarise, although there might be some minor discrepancies in the appellants' case, these have been satisfactorily explained and clarified. The Council is unable to credibly rebut the supporting material and I must thereby conclude that the evidence adduced is largely compelling. As such, the appellants have discharged the burden of proof. Accordingly, the Council's decision was not well founded.
18. For the reasons given above, I conclude that, on the balance of probability, the AOC's requirements had been breached for a period sufficient to allow for the dwelling's unfettered use in this regard during the appellant's continued occupation. It was therefore lawful on 13 September 2022, within the meaning of section 191(3) of the Town and Country Planning Act 1990.
19. It should be noted that the said condition is not removed by the LDC and it could be revived if someone who meets the AOC's requirements later occupies the property.
20. In the circumstances I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR

Lawful Development Certificate

APPEAL REF. APP/X1545/X/23/3319560

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 13 September 2022 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown edged in red on the plan attached to this certificate was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990 as amended, for the following reason:

The time period for enforcement had expired and the dwelling's use by the current occupiers without observance of the AOC's requirements did not contravene any of the requirements of any enforcement notice or breach of condition notice then in force.

Timothy C King

INSPECTOR

Date: **26 June 2025**

First Schedule

Use of Little Wycke Farm, by the current occupiers, in breach of condition 3 of MAL/191/77 and condition 4 of 00/00353/FUL for a continuous period of time in excess of ten years.

Second Schedule

Little Wycke Farm, Blind Lane, Mundon, Essex CM9 6PS

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the certified date and, thus, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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 attached to the Lawful Development Certificate dated: **26 June 2025**

by Timothy C King BA (Hons) MRTPI

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Scale: Do not scale

