



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2025

Appeal Ref: APP/L3815/X/24/3343345

Long Acres, Drift Lane, Chidham, West Sussex PO18 8PR

- 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 Tony Leigh against the decision of Chichester District Council.
 - The application ref CH/23/01718/ELD, dated 8 September 2023, was refused by notice dated 30 October 2023.
 - The application was made under section 191(1)(b) of the Act.
 - The development for which an LDC is sought is hardstanding and earth bund on the land for in excess of 4 years prior to service of Enforcement Notice on 18th August 2022.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application made by Chichester District Council against Mr Tony Leigh is the subject of a separate Decision.

Preliminary Matters

3. The parties were advised that a site visit was not necessary and would not be undertaken.
4. The description of development for which an LDC is sought is taken from the application form. The Council's decision notice gave a different description, but it has not been confirmed that this was an agreed change, so I shall determine the appeal as relating to the development described in the application.

Main Issue

5. The main issue is whether the Council's refusal to issue an LDC was well founded. The responsibility for providing sufficient information to support an LDC appeal primarily rests with an appellant. However, if no other evidence contradicts or otherwise makes their version of events less than probable, and provided their evidence is sufficiently precise and unambiguous, there is no good reason to withhold an LDC.

Reasons

6. Section 191(2) of the Act provides that uses and operations are lawful at any time if both of the following apply:
 - (a) No enforcement action may then be taken in respect of them.
 - (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Whether enforcement action could have been taken

7. The application was made and determined having regard to whether the hardstanding and earth bund had been lawful when an enforcement notice requiring their removal was issued.¹
8. When the application was made, section 171B of the Act provided that no enforcement action could be taken in respect of operational development that had been substantially completed more than 4 years beforehand.
9. The ability to take enforcement action therefore turns on whether the hardstanding and earth bund were substantially completed on or before 8 September 2019 (“the Relevant Date”). That is 4 years before the date on which the application was valid, not 4 years before the date on which the notice took effect.
10. The appellant made a Statutory Declaration (SD) at the application stage, stating that soil was scraped back to form the earth bund and the hardstanding material was imported to the site in late spring/early summer 2018. The SD included an aerial image, taken in July 2019, which appears to show the operations complete.
11. Additional SDs made by David Waterhouse, Gary Palmer and Gerry Buckland all state that they assisted the appellant in forming the hardstanding and earth bund during July 2018 and that the works were completed by the end of that month.
12. Given that Mr Waterhouse and Mr Palmer are the owners of plant hire and skip hire businesses respectively, the absence of any contracts or invoices for the work they did for the appellant is surprising. Nevertheless, the 4 SDs should be afforded significant weight as evidence.
13. Furthermore, The Council’s evidence records that earth bunds had been erected and the area within them was being used as a compound on 2 July 2019, prior to the Relevant Date. Hardstanding can be seen within the compound area in the photographs taken by the Council that day.
14. While I have seen reference to complaints that more bunds were formed on the land in 2020, the Council’s evidence does not confirm that this was verified.
15. Accordingly, the available evidence indicates that, on the balance of probabilities, the hardstanding and earth bund were substantially completed before the Relevant Date. No enforcement action could therefore be taken in respect of them on the date that the application was validly made.

Whether any requirement of an enforcement notice in force was contravened

16. Section 191(4) of the Act specifies that a decision to issue or refuse to issue an LDC must be made based on the lawfulness of the matter “at the time of the application.”
17. The enforcement notice requiring the hardstanding and earth bund to be broken up and removed from the land had taken effect on 29 September 2022 and was still in force on the date the application was made. Accordingly, the hardstanding and earth bund contravened the requirements of an enforcement notice then in force, so they were not lawful by reason of section 191(2)(b) of the Act.

¹ References CH/58, TCP-10-005644 and CH/19/00200/CONCOU, issued 18 August 2022.

Conclusion

18. For the reasons given above, which differ from the Council's, I conclude that its refusal to grant an LDC for hardstanding and earth bund on the land for in excess of 4 years prior to service of Enforcement Notice on 18th August 2022 is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Mark Harbottle

INSPECTOR