



Appeal Decision

Site visit made on 4 March 2026

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2026

Appeal Ref: APP/R3650/X/25/3361102

**Land at North Cottage, White Lea, Guildford Road, Rudgwick, Horsham
RH12 3BG**

- 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 Serge Ireland against the decision of Waverley Borough Council.
- The application ref WA/2024/02440, dated 8 December 2024, was refused by notice dated 3 February 2025.
- 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 to confirm that works have commenced to implement planning permission WA/2021/02214 (60m x 25m sand school) within the required time period.

Summary 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.

Preliminary Matters

1. Planning permission was granted under reference WA/2021/02214 for the construction of a 25 metre x 60 metre sand school with surrounding post and rail fence on 8 December 2021. In accordance with section 91 of the Act, this was subject to a condition requiring that the development should be begun not later than the expiration of three years beginning with the date of the permission.
2. The appellant is seeking to demonstrate, through this LDC, that the development was commenced within the time period specified within that condition, i.e. by 8 December 2024.
3. The Council suggest that considering additional information beyond that submitted with the application for an LDC would not meet Planning Inspectorate Good Practice Advice Note 09. However, that document was withdrawn in 2014 as part of the transition to planning practice guidance (PPG). It appears to have related to planning appeals under section 174 of the Act rather than LDCs under section 195 of the Act. It related to alternatives to the scheme submitted to the Council, i.e. the development proposed, rather than evidence submitted in support.
4. Section 195(2)-(3) of the Act requires me to consider whether the Council's decision was well-founded. Whilst this indicates such appeals are limited to a review of the Council's decision, it is possible for parties to submit additional evidence that was not before the Council when it made its decision. This is because it refers to whether the refusal is well-founded, i.e. the Council's decision, not the reasons for the decision. The application being appealed is made to ascertain what is lawful. If the evidence taken as a whole suggests that the matter in question is lawful, it would be necessary to grant an LDC.

Main Issue

5. The main issue in an appeal against refusal of an LDC is whether the decision of the Council was well-founded. In this case, this is whether the construction of the sand school was begun prior to the relevant date, being 8 December 2024.

Reasons

6. In the case of an application for an LDC, the onus is on the appellant to demonstrate the lawfulness of the development. The case of *Gabbitts v SSE & Newham LBC* [1085] JPL 732 made clear that 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. The test of the evidence is on the balance of probability.
7. The appellant claims to have sought to submit an application for an LDC on 1 December 2024 that included an Inspection Report with photographic evidence. That application was not accepted by the Council as the appellant had used the wrong process. An application was subsequently submitted via the Planning Portal on 8 December 2024 but was not considered valid until 19 December 2024 when the full fee was paid. That indicates the photographic evidence that had been submitted with the application was taken prior to the relevant date.
8. The modified Inspection Report includes what appear to be screen grabs from a mobile phone dated 29 November 2024. These show photographs of an excavation in the corner of an area marked out. That appears to be the area of the proposed sand school. The appeal is supported with a Statutory Declaration signed by Julian Pearson who is a neighbour of the appellant. He says that he can see the appellant's land from his and lent the appellant an excavator/digger on 28 November 2024 that was returned on 30 November 2024. This is the same excavator/digger shown in the photographs. He says that he witnessed the appellant commencing the works during the time he had borrowed the digger.
9. The evidence supplied is precise and unambiguous. There is no evidence to contradict the appellant's version of events or make it less than probable. On that basis and on the balance of probability, the construction of the sand school was begun prior to the relevant date.
10. 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 to confirm that works have commenced to implement planning permission WA/2021/02214 (60m x 25m sand school) within the required time period is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Final Decision

11. 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.

AJ Steen

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 December 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Work commenced on the construction of the sand school granted planning permission under reference WA/2021/02214 dated 8 December 2021 in accordance with the condition requiring that the development should be begun not later than the expiration of three years beginning with the date of the permission provided by section 91 of the Town and Country Planning Act 1990 as amended.

Signed

AJ Steen

Inspector

Date: 27th March 2026

Reference: APP/R3650/X/25/3361102

First Schedule

Works commenced to implement planning permission WA/2021/02214 (60m x 25m sand school)

Second Schedule

Land at North Cottage, White Lea, Guildford Road, Rudgwick, Horsham RH12 3BG

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

This is the plan referred to in the Lawful Development Certificate dated; 27th March 2026

by AJ Steen

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Scale: Not to Scale

