



Appeal Decision

Site visit made on 4 August 2026

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2026

Appeal Ref: APP/K2230/X/25/3361359

Parsonage Farm, The Street, Cobham, Kent DA12 3DG

- 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 Richard Scripps of Adrian Scripps Ltd against the decision of Gravesham Borough Council.
 - The application ref 20240845, dated 17 September 2024, was refused by notice dated 12 November 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: Implementation of planning permission 20230584 (as amended by 20240233) by digging a trench at the site.
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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 operation which is found to be lawful.

Application for Costs

2. An application for costs was made by Mr Richard Scripps of Adrian Scripps Ltd against Gravesham Borough Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse the application was well-founded.

Reasons

4. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the operations.
5. Section 191(2) of the same Act states that for the purposes of this Act 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.
6. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness

at the time of the application of the operations described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

7. In a lawful development certificate appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
8. On 1 August 2023 the Council granted conditional planning permission on the appeal site for the conversion of a barn to provide two dwellings, Ref 20230584, referred to in the description for this LDC application. Condition 2 of that permission required that the development be carried out in accordance with specified plans. Condition 6 of that permission required, before the commencement of development, that a scheme for the disposal of surface water run-off, incorporating sustainable urban drainage systems (SUDS), be submitted to and approved in writing by the local planning authority.
9. On 9 April 2024 the Council granted a non-material amendment to the above planning permission. This application, Ref 20240233, amended the wording of conditions 2 and 6. Condition 2 thereafter included Plan 1038972/P 101A A. This showed a trench, to contain the foundation upon which an external wall of an extension included in the above planning permission would be built. In relation to its prohibition on the commencement of development, Condition 6 thereafter incorporated the exception *“other than limited engineering operations shown on Plan 1038972/P 101A A relating only to the indicated trench”*.
10. This exception explicitly allowed the trench to be dug, prior to the scheme for the disposal of surface water run-off (SUDS) being required. In this regard, the Council's report on the non-material amendment confirmed:

“The change to condition 6 would essentially allow the carrying out of engineering operations shown in Drawing no. 1038972/P 101 A, Revision A. Only these engineering works could be carried out prior to submission and approval of the required SUDs Details.”
11. The above planning permission was due to expire on 1 August 2026. However, the aforementioned trench was dug on 2 September 2024. Section 56 of the 1990 Act is clear that development shall be taken to be begun on the earliest date on which any ‘material operation’ comprised in the development begins to be carried out and that the definition of ‘material operation’ includes the digging of a trench which is to contain the foundations, or part of the foundations, of a building.
12. In light of the above, the relevant planning permission was implemented by the digging of the trench and the effect of the exception inserted by the non-material amendment is that the trench could be lawfully dug without the scheme for the disposal of surface water run-off first being required. In effect, the incorporation of the exception meant that Condition 6 was no longer a pre-commencement condition. I have been provided with no reason to reach any other conclusion.
13. The Council states that the trench cannot be taken to have been a lawful commencement of the authorised development but it has not been explained why. The appellant states that this position makes no sense and in light of the facts set out above, I agree.

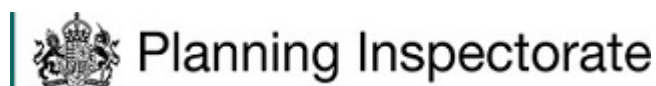
14. Moreover, the Council's position now ignores the very purpose of the non-material amendment application, that the Council explicitly acknowledged in its own report, as set out above.
15. My attention has been drawn to another appeal decision concerning a trench, dated 5 July 2001, Ref APP/M6825/X/00/1050150. But matters of lawfulness turn on the individual facts and circumstances of each case. As such other appeal decisions do not necessarily assist in determining what is lawful on another site. In the case I have been referred to, the relevant permission did not incorporate an exception that allowed any of that development to occur without discharging the relevant pre-commencement condition, as is so in the case before me. Therefore, that other appeal decision does not assist the Council in this case.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of *'Implementation of planning permission 20230584 (as amended by 20240233) by digging a trench at the site,'* was not well founded. The appeal should succeed, and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

L Perkins

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 17 September 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:

Planning permission 20230584 (as amended by 20240233) was implemented by digging a trench at the site before the permission expired and the explicit wording of Condition 6 of that permission (as amended) contains a clear exception that allowed that trench to be dug before the relevant scheme for the disposal of surface water run-off was required. As such, implementation of the permission was not in contravention of a condition precedent.

Signed:

L Perkins

INSPECTOR

Date: 20 August 2026

Reference: APP/K2230/X/25/3361359

First Schedule

Implementation of planning permission 20230584 (as amended by 20240233) by digging a trench at the site.

Second Schedule

Land at Parsonage Farm, The Street, Cobham, Kent DA12 3DG

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 use/operations described in the First Schedule taking place on the land specified in the Second Schedule was/were lawful, on the certified date and, thus, was/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 use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/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: 20 August 2026

By L Perkins BSc (Hons) DipTP MRTPI

Land at: Parsonage Farm, The Street, Cobham, Kent DA12 3DG

Reference: APP/K2230/X/25/3361359

Scale: Not to Scale

