
Appeal Decision

Site visit made on 16 September 2026

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2026

Appeal Ref: APP/P0240/X/25/3363150

Plot 4, Agricultural land, Kiln Lane & Great Lane, Clophill, Bedfordshire, MK45 4BQ

- 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 Matt Beard against the decision of Central Bedfordshire Council.
 - The application ref CB/24/02950/LDCP, dated 17 October 2024, was refused by notice dated 28 February 2025.
 - The application was made under section 192(1)(a) & 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The use and development for which a certificate of lawful use or development is sought is a use for the growing of fruit trees, fruit bushes, a vegetable patch and wild flowers and the erection of a stock proof fence around the perimeter and a garden shed to store tools, compost and potting equipment.
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Decision

1. The appeal is dismissed in so far as it relates to the erection of a garden shed. The appeal is allowed in so far as it relates to the use of the land for the growing of fruit trees, fruit bushes, a vegetable patch and wildflowers and the erection of a stock proof fence around the perimeter and attached to this decision is a certificate of lawful use or development describing the proposed operations which are found to be lawful.

Preliminary Matters

2. The appeal relates to the Council's refusal to grant a Certificate of Lawfulness for a Proposed Use or Development (CLOPUD), which was made under s192 of the Town and Country Planning Act 1990 (the Act). In the banner heading above I have summarised the description given on the application form to include the key elements of the proposed use and development, excluding unnecessary or superfluous wording.

Reasons

3. An application for a CLOPUD is not an application for planning permission. As such my decision makes no comment on the planning merits of the development. The main issue is whether the Council's decision to refuse the application was well-founded based on the facts of the case and any relevant judicial authority. The onus rests with an appellant to make their case, on the balance of probability.
4. The application relates to a proposed use and associated operational development. As correctly pointed out by the Council, if the use was considered to be unlawful then it follows that the operational development could not benefit from planning permission granted by the Town and Country Planning (General

Permitted Development) (England) Order 2015 (as amended) (the GPDO), by virtue of article 3(5)(b) of that statutory instrument.

5. Consequently, I shall first consider the question of whether the proposed use would be lawful before moving on to consider the operational development. There appears to be no dispute that agriculture is the lawful existing use of the land. Whilst it may not have been in active productive use at the time of the application, it has a long history of agricultural use with no planning history to suggest any use for other purposes.
6. The appellant has referred to the definition of agriculture from the Agriculture Act 1947. However, it is more pertinent to consider the appeal in relation to planning legislation because I must consider whether the proposal would be lawful in planning terms. Under s336(1) of the Town and Country Planning Act 1990 (the Act) agriculture is defined as:

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly.
7. The Council maintains that the proposal would result in a material change of use from agriculture to an allotment for the purpose of hobby farming/ leisure use and that such a use would not be lawful. There is no definition of allotment within the Act. One tends to think of an allotment as a parcel of land, often but not always owned by a Council or Parish Council, often with an associated allotment committee or the like, with stipulations as to what can be carried on within each plot. Produce is grown or livestock kept, generally by the person who rents the plot, for their own consumption and enjoyment.
8. Whilst there does not appear to be an over-arching body controlling what is grown or kept on each plot there are some similarities in that the former paddock has been sold off into numerous rectangular plots, one of which has been purchased by the appellant.
9. Save for a small number of plots which have been enclosed, no work has yet been undertaken on the majority of the wider paddock, including the appeal site. The plots that have been used appear to have different purposes. In this case, the appellant wishes to grow pomegranate trees and other fruit, vegetables and plants that would normally be imported to assess the effects of climate change on the ability to scale up the farming of such plants commercially. Whilst that may not be a commercial use of itself, the aim is to trial the effectiveness of different plants in different growing conditions, including whether they are more suited to dryer areas at the top of the plot or damper areas at the bottom of the slope.
10. That is notably different to a leisure use or garden use. Moreover, the definition of agriculture does not stipulate that any produce grown must be done so for commercial purposes. I have been referred to the judgment in *Crowborough Parish Council v Secretary of State for Environment* (1982)¹ which held that fruit

¹ *Crowborough PC v SSE & Wealden DC*

growing and seed growing on an allotment could fall within the remit of “horticulture”, thereby meeting the definition of agriculture within the Act. The judgment is of some vintage but nothing is before me to indicate it is no longer good precedent. Based on the information provided it seems to me that the intended use would amount to horticulture or fruit growing, thereby falling squarely within the definition of the Act.

11. The judgment also held that any definition in subordinate legislation, such as the GPDO, could not be used to supplant the definition of the main legislation in the Act. Under paragraph D.1 of Part 6, Schedule 2 of the GPDO “agricultural land” means land which; *“before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business and excludes any dwellinghouse or garden”*.
12. That definition applies for the interpretation of permitted development rights under Part 6 but does not override the definition of Agriculture at s336(1) of the Act. In other words, whilst agriculture may need to be carried out for the purpose of a trade or business in order for “Part 6” permitted development rights to apply, that does not entail that a trade or business use is required in order to fall within the definition of agriculture in the Act.
13. The fact that legislators considered it necessary to specify that permitted development rights only apply to an agricultural use which is carried on for a trade or business is perhaps a tacit acknowledgement that it is possible for a use to fall within the definition of agriculture under the definition of the Act without being carried on for such purposes. If that was an inherent part of the definition in the Act, there would have been no need to add the stipulation into paragraph D.1 of Part 6 for the purposes of interpreting the GPDO.
14. The Council maintains that the sub-division of the paddock into small plots and erection of fencing and associated buildings would alter the established character of the area which would itself be an indication that a material change of use would occur. However, “agriculture” covers a wide variety of activities, many of which have distinctly different visual characters. Upland pasture is notably different to downland arable farming. Market gardening, pig farming, poultry units are similarly distinct, just to provide a few examples.
15. Therefore, simply because the enclosure of the paddock into smaller plots may be visually different when compared to the former paddock does not entail that a material change of use would occur. If the use falls within the definition of agriculture, and I am satisfied that it would, then there would be no material change of use, notwithstanding the visual changes.
16. The Council has also referred to an appeal decision within which an Inspector referred to section 109 of the Agriculture Act 1947 prior to reaching a conclusion that the absence of any trade or business use indicated that the growing of fruit trees in that instance did not fall within the definition of agriculture². It should be stressed that decision related to a planning application and not a CLOPUD application. Having read the definition within s109 of the Agriculture Act I can see no clear reference to the need for a trade or business and the wording is largely similar to that within the Act for planning purposes.

² Reference APP/C2708/W/19/3234563

17. Even if I am wrong on that point, the Act is the primary legislation for determining whether something is lawful in planning terms and must take precedence over any reference to the Agriculture Act. Had legislators wanted to include a requirement that agriculture must be for the purposes of a trade or business, they could have done so. There is no such reference and the judgment in *Crowborough* indicates that it is not a requirement to fall within the definition.
18. There are also clear differences on the facts of the case compared with the appeal referred to by the Council. In that situation the land was to form an extension to a domestic garden. There is no residential property associated with the proposal in the present appeal.
19. For all of those reasons, I am satisfied, on the balance of probability, that the proposed use would fall within the definition of agriculture, as defined by the Act. Given that no material change of use would occur it follows that use of the land for the specified purpose would not amount to development for which planning permission is required. It would be lawful as a result.
20. I appreciate that the Council may be concerned about the use of the numerous plots across the land and the intentions of each new owner may be unclear. My decision in this case relates to the specific use proposed by the appellant on his plot and gives no indication that any other use on different plots would be lawful.
21. Given that the use of the land would be lawful it follows that the erection of the perimeter fencing would also be lawful. Under Class A, Part 2 of Schedule 2 of the GPDO the erection of a gate, fence, wall or other means of enclosure is permitted subject to a number of limitations. The details indicate that the fencing would be “up to” 4ft above ground level”. The perimeter of the land is not adjacent to any highway used by vehicular traffic and the height would be within the limitation of paragraph A.1(b) of Class A, Part 2, Schedule 2 of the GPDO, such as to amount to permitted development.
22. However, the proposed shed would not amount to permitted development for a number of reasons. Permitted development rights for the erection of agricultural buildings do exist under Class A, Part 6 of Schedule 2 of the GPDO. Those rights only apply to agricultural units of over 5 hectares or more. The plot in question is nowhere near that size.
23. Nor do I accept that the “agricultural unit” should be taken to mean the former paddock as a whole. The land has been sold off to different people and the use of each small plot has no connection with the use of neighbouring plots. The appellant has referred to an appeal decision where it was held that land within an agricultural unit does not have to be contiguous with other land within the unit in order for rights under Part 6 to apply.
24. However, that relates to a situation where a farm may own different parcels of land and the combined size will be over 5 hectares. In this case, there is nothing to indicate that the appellant owns any other land that would be associated with the proposed use. Thus, the land does not benefit from permitted development rights under Class A of Part 6. Even if it did, that would be subject to a “prior approval” regime and no such application has been approved. Class B of Part 6 relates to units of not less than 0.4 hectares, which is greater than the size of the plot and, in any event, the erection of buildings is not permitted under that class.

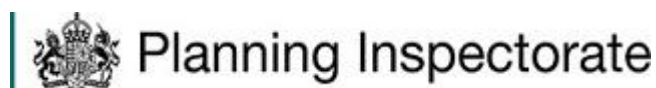
25. Moreover, as noted above, in order to benefit from permitted development rights under Part 6 any agriculture needs to be carried out for the purpose of a trade or business and there is no evidence that would be the case here. Therefore, the shed would not be permitted development and planning permission would need to be sought and granted for its erection. In the absence of such permission, it would not be lawful.

Conclusion

26. For the reasons given above I conclude, on the evidence now available, that (a) the Council's refusal to grant a certificate of lawful use or development in respect of the proposed use of the land for the growing of fruit trees, fruit bushes, a vegetable patch and wild flowers and the erection of a stock fence around the perimeter is not well-founded and the appeal should succeed for that part of the development only; and (b) the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a garden shed is well-founded and the appeal for that part of the development should fail. I will exercise the powers transferred to me under section 195(2) and 195(3) of the 1990 Act as amended.

Chris Preston

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 October 2024 the use and 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, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the land for the growing of fruit trees, fruit bushes, a vegetable patch and wild flowers would fall within the definition of agriculture, as set out at s336(1) of the Town and Country Planning Act 1990. As such, there would be no material change of use from the existing lawful use as agricultural land and would not amount to development requiring planning permission.

The proposed stock proof perimeter fence would be less than 2m high and not adjacent to a highway used by vehicular traffic such that it would amount to development permitted by Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Chris Preston

Inspector

Date: 18th September 2026

Reference: APP/P0240/X/25/3363150

First Schedule

The use of the land for the growing of fruit trees, fruit bushes, a vegetable patch and wild flowers and the erection of a stock proof perimeter fence

Second Schedule

Land at Plot 4, Agricultural land, Clophill, MK45 4BQ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 18th September 2026

by Chris Preston

Land at: Plot 4, Agricultural land, Clophill, MK45 4BQ

Reference: APP/P0240/X/25/3363150

Scale: Not to Scale

