



Appeal Decision

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 29 October 2026

Appeal Ref: APP/J0405/X/25/3371853

Land Adjacent to Long's Wood, Buckingham Road, Akeley, Buckinghamshire, MK18 1SP

- 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 Graham Bolitho against the decision of Buckinghamshire Council - North Area (Aylesbury).
 - The application ref 25/01200/CPE, dated 16 April 2025, was refused by notice dated 2 June 2025.
 - 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 a barn for storage of agriculture materials and agriculture equipment, and polytunnel for seeding of plants and animal feed.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the issues in dispute have been capable of determination on the basis of the parties' submitted documentary evidence, it has not been necessary to undertake a site visit.
3. An LDC is not a planning permission (PP). Its purpose is to allow landowners and others to ascertain whether specific uses, operations or other activities are or would be lawful and therefore immune from enforcement action. The determination of an LDC depends entirely on factual evidence and the interpretation of planning law, rather than planning policies or planning merits. Hence, for example, any amenity impacts on neighbouring properties, or the fact that the appeal site is within the countryside, are immaterial to whether or not an LDC is issued.
4. The onus is on the appellant to demonstrate, on the balance of probabilities, that the proposed development would be lawful. If there is no contradictory evidence from others to make their case less than probable, there is no reason to dismiss the appeal, provided that the appellant's evidence alone is sufficiently precise and unambiguous.

Main Issue

5. The main issue in this appeal is whether the Council's decision to refuse a LDC was well founded.

Reasons

6. The provisions of s191(2) of the Act include (a) that a use is lawful at any time if no enforcement action can be taken in respect of it, whether because it did not involve

development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force.

7. Although the appellant has applied for a certificate in respect of an existing use, it also includes operational development, specifically the erection of the polytunnel and barn. Notably, the use of land or buildings for the purposes of agriculture is excluded from the definition of development by section 55(2)(e) of the Act. As such, the claimed agricultural use would not, of itself, require planning permission. Nevertheless, the certificate sought is dependent not only upon the claimed use but also upon the lawfulness of the operational development. Therefore, whilst any agricultural use of the structures may be lawful, the outcome of this appeal remains contingent on whether the barn and polytunnel were lawfully erected or have otherwise become lawful through the passage of time.
8. Where a breach of planning control consists of the carrying out, without planning permission, of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken under section 171B(1)(a) of the Act after the end of the period of four years beginning on the date on which those operations were substantially completed, where that took place before 25 April 2024.
9. The relevant date for determining lawfulness is the date of the LDC application, hence 16 April 2025. The appellant submits that the barn was erected in 2012 and the polytunnel was erected in 2014. There is no evidence before me that either of these structures obtained express PP. The appellant must therefore demonstrate, on the balance of probabilities, that the barn and polytunnel were erected before 16 April 2021.
10. A document from TMS Building Services dated 12 September 2012 has been submitted in support of the claimed construction of the barn, as it refers to the erection of a barn and associated works, including cladding and the installation of a roller shutter. However, it is unclear whether the works were ever undertaken before or following the issue of this document, and whether it is a quote for future works or an invoice for completed works. In the absence of such clarity, it carries very little weight in support of when the barn was erected.
11. A photograph of a large green structure has been submitted, presumably as evidence of the barn's existence. The photograph is dated 6 April 2019 and contains geolocation data which appears broadly consistent with the appeal site. However, it is unclear whether the photograph depicts the entirety of the building in question. A further still image, which appears to be derived from a video posted on social media dated 29 December 2013, has also been provided. While the image includes orange highlighting intended to identify the dimensions of the barn, it remains unclear whether it depicts the same structure shown in the 2019 photograph. Additionally, the image contains no readily identifiable features linking it to the appeal site, and the image of the building alleged to be shown is of poor quality and indistinct. An aerial image from Google Earth dated 7 August 2013 also indicates the presence of a structure; however, it is not possible to determine with any certainty whether the structure shown is the barn that is the subject of this appeal.

12. In relation to the polytunnel, a photograph has been provided showing what appears to be a larger polytunnel alongside a smaller polytunnel-like structure. However, the photograph is undated. A further photograph dated 3 June 2020 depicts a plant, with a polytunnel visible in the background, or possibly forming the structure within which the photograph was taken. The associated geolocation data appears broadly consistent with the appeal site. Another photograph, dated 30 November 2015, shows a bird in the foreground with partial views of two apparent polytunnel structures in the background. However, it is unclear whether either structure corresponds with the polytunnel that is the subject of this appeal.
13. An insurance policy issued by NFU Mutual has been submitted which indicates that insurance cover has been held for a barn and polytunnel at Maids Moreton since 30 October 2015. Whilst this document provides some limited evidence that structures described as a barn and polytunnel existed at that time, it does not clearly identify the specific structures that are the subject of this appeal.
14. The appellant has referred to the existence of additional photographs and other evidence that may be capable of supporting the application. However, such material is not before me.
15. For the reasons I have described above, I find that the appellant's submitted documents and photographs fail to provide sufficient evidence to demonstrate, on the balance of probabilities, that the barn and polytunnel subject of the appeal were substantially completed structures before 16 April 2021. Consequently, I cannot conclude that the claimed use of the structures is lawful, and a Lawful Development Certificate should not be granted
16. Furthermore, section 191 of the Act states that an LDC shall specify the land to which it relates. Whilst a location plan has been submitted, it shows only the overall site outlined in red together with a blue pin. The plan does not clearly identify the position of the barn or polytunnel, nor the extent of the land to which any certificate would relate. The Council has also observed from current aerial imagery that there are other buildings and structures on the land, which further complicates the identification of the relevant buildings. As such, it would not have been possible to issue a certificate in terms that clearly and conclusively define the land and development to which it relates.

Conclusion

17. For these reasons I conclude that the Council's refusal to grant a LDC in respect of a barn for storage of agriculture materials and agriculture equipment, and polytunnel for seeding of plants and animal feed was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

S Lo

INSPECTOR