

STATEMENT OF CASE

REF:
DHA/33375

DATE:
August 2025

SITE:
**FARM SHOP AND OFFICE, BROOKERS FARM, LUDESDOWN ROAD,
LUDESDOWN, GRAVESEND**

CLIENT:
Vineyard Farms Ltd

1.1 INTRODUCTION

- 1.1.1 This Statement is submitted in support of an application for a Lawful Development Certificate ('LDC') on behalf of Vineyard Farms Ltd in respect of the wine shop and offices at Brookers Farm, Luddesdown Road, Luddesdown, Gravesend.
- 1.1.2 Confirmation is sought from Gravesham Borough Council (GBC) that the use of part of the agricultural building as a small wine shop ("Cellar Door") and vineyard/farm Offices in association with the existing agricultural operations at Brookers Farm is lawful.
- 1.1.3 The certificate is sought on the basis that the shop (selling produce from the agricultural unit upon which it is located), and ancillary office space for ongoing agricultural operations, is not considered to be a material change of use of the building and it is ancillary to its existing agricultural use. It is therefore not development for which planning permission is required and is therefore lawful.
- 1.1.4 This application is accompanied by the following plans and documents which are referred to as evidence within this Statement:

REFERENCE	DOCUMENT
-	Application Form
DHA/36373	Statement of Case (this document)
	Plans
DHA_33477_01	Site Location Plan
	Evidence
	Statutory Declaration – Mr G Smith
	Photos of the wine shop
	Photos of the site offices
	Photos of the bottling and labelling facility
	Photos of the fermentation tanks

TABLE 1.1: SUBMITTED DOCUMENTS

1.2 SITE OVERVIEW

- 1.2.1 The site is situated in the hamlet of Luddesdown which is within the Kent Downs National Landscape (formerly AONB) and the Green Belt south east of The Lion pub and north of Luddesdown Court, located in the countryside between Cuxton, Meopham and Cobham.
- 1.2.2 Vineyard Farms Ltd have operated the winery at Brookers Farm, Luddesdown since 2018 and is the Applicant's only site for wine making within the agricultural holding.
- 1.2.3 The farm offices within the agricultural building have been in use since February 2020, providing ancillary office space to support the operations of the farming estate. An extension to the office floor space within the building has been added in July 2025 to accommodate the growing business and staff requirements.
- 1.2.4 The conversion of part of the agricultural building into the 'Cellar Shop', to enable the sale of wine and other farm produce at Brookers Farm began on 13 March 2024, with the shop opening on 20 May 2024.
- 1.2.5 Figure 1.1 shows the location of the shop and offices, while Figure 1.2 identifies the buildings at Brookers Farm that form part of the existing viticulture operation. Figure 1.3 shows the site in the wider context of the farming estate under the applicant's ownership.



FIGURE 1.1 SITE LOCATION (RED LINE INDICATIVE)

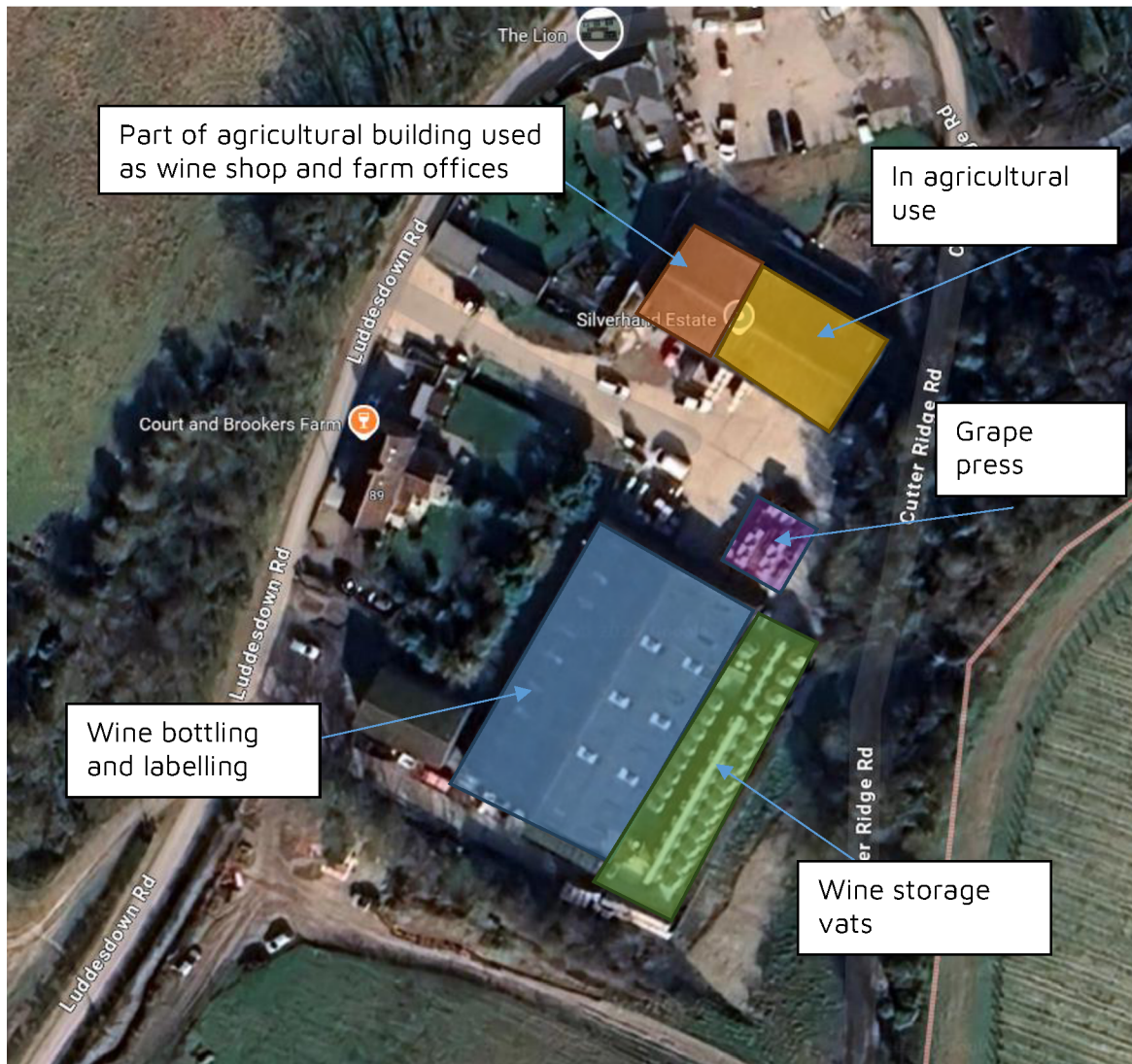


FIGURE 1.2 ILLUSTRATIVE PLAN THE WINE SHOP AND OFFICES IN THE CONTEXT OF THE FARMS WINE MAKING FACILITIES

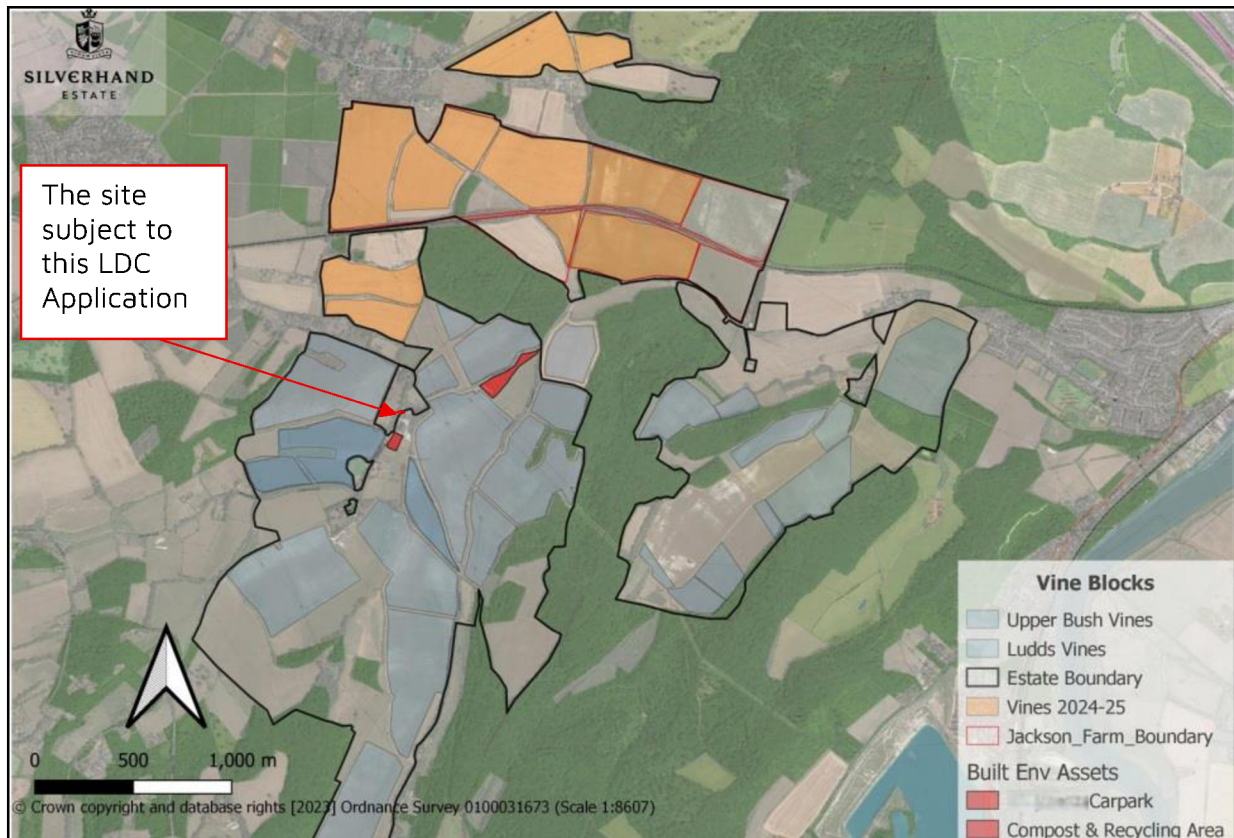


FIGURE 1.3 PLAN SHOWING THE WINE SHOP AND OFFICES IN THE CONTEXT OF THE APPLICANT VINEYARDS AND FARMING ESTATE

1.3 THE CERTIFICATE PROPOSAL

- 1.3.1 The application has been submitted following correspondence with GBC's Enforcement Team dated 09 July 2025 who have invited an LDC application to provide evidence that the use of part of the building as a wine shop and farm office are ancillary operations to the wider agricultural unit and are therefore lawful on that basis. This Statement, therefore, provides the necessary evidence to confirm that no material change of use of the building has occurred and that the continued operation of the shop and farm offices in the building are lawful.

The Wine Shop

- 1.3.2 The wine shop known as 'Cellar Door' is situated within the western end of an existing agricultural building. Part of the agricultural building has been subdivided and internal works completed to facilitate the creation of the shop. The shop is accessed from the building's northern elevation from the existing pub (The Lion) car park. For staff, access is also available from the rear (southern elevation) of the building from within the farmyard. There is a connecting door within the wine shop for use by staff only.

- 1.3.3 From the shop, the majority of sales are of wine made using grapes grown on the estate and pressed, matured and bottled in the facilities shown in figure 1.2 above. The remainder of wines sales are from Vineyard Farms Ltd parent company MDCV who own and run vineyards in Provence in France. A breakdown of sales by revenue for the shop is provided in Appendix 1.
- 1.3.4 In addition to wine, the shop also sells a small amount of honey, wool and lamb reared and produced on the estate. This is in addition to associated wine sales goods such as stoppers, wine buckets, coolers etc. It has been confirmed by Vineyard Farms Ltd, that no less than 90% of revenue from sales in the shop are from the farm produce and made into products for sale.
- 1.3.5 On occasion the shop is also used as part of the vineyard tours operated by Vineyard Farms Ltd for wine tasting and to show introductory videos giving an overview of the estate and how it is operated.
- 1.3.6 Photographs showing the outside and inside of the shop are provided in Appendix 2. Photos of the adjacent wine making facilities are provided in Appendix 3.

Farm Office

- 1.3.7 Above the wine shop is an internal mezzanine level which has been converted into space used as offices by the farming estate staff. This includes two rooms, accessed by an internal staircase providing space for approximately 10 desks.
- 1.3.8 This office space is used by farm employees associated with the day to day running of the farm estate.
- 1.3.9 Photographs showing the office space are provided in Appendix X.

Legal Basis for Seeking an LDC

- 1.3.10 The definition of “agriculture” in the Town and Country Planning Act 1990, states:

““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”

- 1.3.11 Agriculture operations are expressly stated as not constituting development under Paragraph (e) of S55(2) Town and Country Planning Act 1990:

“The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land”... “The use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used”.

- 1.3.12 With reference to *Millington v Secretary of State for the Environment, Transport and the Regions 1999 (Appendix 5)* it is considered that the shop and the sale of produce from the associated farming estate does not represent a material change of use. In essence the processing of farm produce so as to produce an identifiably different product for sale is considered consequential to the agricultural operation of producing goods. This being so, the shop is an agricultural use of an agricultural building occupied together with the farming use of the estate.
- 1.3.13 *The Millington case established the following approach when considering whether an activity, having regard to ordinary and reasonable practice, can be:*
1. regarded as ordinarily incidental to the growing of grapes;
 2. included in the general term agriculture;
 3. be regarded as ancillary to normal farming activities;
 4. be regarded as reasonably necessary to make the product marketable or disposable to profit; or
 5. be said to have come to the stage where the operations cannot reasonably be consequential on the agricultural operations of producing the crop.
- 1.3.14 It is our position and that of Vineyard Farms Ltd, that the shop meets all of the relevant tests set out and is therefore not development and not a material change of use of the building or land.
- 1.3.15 It is acknowledged that the shop sells small quantities of honey, wool and lamb in addition to wine but it is considered that the above principles apply equally in this regard.
- 1.3.16 Whilst the shop sells a small number of wines from their parent company in Provence, and other goods such as stoppers, wine buckets, coolers etc. Vineyard Farms Ltd has confirmed that this is less than 10% of goods sold and so de minimis to the overall activity and does not represent a change of use (Appeal Ref: APP/K6920/D/99/513513 provided in Appendix 6).
- 1.3.17 It is on this basis that we consider the shop lawful, and no development/change of use has occurred.
- 1.3.18 In respect of the farm office, there can be little ambiguity about its ancillary nature. The office space used by staff as part of a larger agricultural operation and is considered secondary to the main farming activities. It is used solely by employees of Vineyard Farms Ltd in connection with the agricultural operations on the farm, focussed solely on the viticulture aspect of the business, which is in relation to the vineyard management.

1.4 STANDARD OF PROOF – BALANCE OF PROBABILITY

- 1.4.1 The National Planning Policy Guidance (NPPG) provides guidance for submitting and determining Lawful Development Certificates. Paragraph 6 of the guidance is clear that the onus lies with the applicant to provide sufficient information to 'demonstrate on a balance of probabilities' that the development is lawful. If the LPA obtains information to the contrary, this needs to be shared with the applicant who needs to have the opportunity to comment on it and produce (if needed) counter evidence. In the case of determining applications for existing use, if the LPA has no evidence itself, nor from any others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 1.4.2 On the matter of probability, the Court has held (in *F W Gabbitts v SSE and Newham LBC [1985] JPL 630*) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability". Nevertheless, a suite of evidence has been provided which is intended to give the Council comfort in their decision-making process.
- 1.4.3 Having regard to the legal context, we have provide the following evidence to support the grant of an LDC.

1.5 EVIDENCE

- 1.5.1 The following evidence is provided in support of the application:
- A signed affidavit from Mr Gary Smith CEO of Vineyard Farms Ltd
 - Photographic evidence of the shop (Appendix 2)
 - Photographic evidence of the farm office (Appendix 4)
 - Photographic evidence of the farms wine making facilities (Appendix 3)
 - Sales revenue for the shop by product sold from opening through to 29th July 2025 (Appendix 1)

1.6 CONCLUSION

- 1.6.1 This Statement is submitted in support of an LDC application on behalf of Vineyard Farms Ltd in respect of the shop and farm office located in part of an agricultural barn at Brookers Farm, Luddesdown Road, Luddesdown.
- 1.6.2 Confirmation is sought from GBC that the shop and office is lawful.
- 1.6.3 Evidence has been provided to verify:
- That the shop is in accordance with established case law demonstrating that it is ancillary to the main agricultural estate and use
 - Over 90% of revenue from the shop comes from sales of produce from the farm (principally wine)
 - That the farm office is used solely by employees of Vineyard Farms Ltd in connection with the agricultural operations on the farm
 - No change of use has occurred, and the use of the building is therefore not in breach of condition ii. attached to permission ref. 19880177 (GR/88/177W)
 - The shop and office are lawful.
- 1.6.4 Section 191 of the Town and Country Planning Act 1990 advises (under the heading “Onus of Proof”) that:
- “The relevant test is the “balance of probability”, and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application”.*
- 1.6.5 It is considered that the evidence provided provides sufficient proof of use for the Council and we therefore respectfully request that a Certificate of Lawfulness be issued.

Appendix 1 – Farm shop products and sales revenue

Shop opening until 29th July 2025		
Item	Value	Silverhand / Non Silverhand
Silver Reign Sparkling White Brut NV 0.75L	£ 26,228.66	Silverhand
Silverhand Brut NV TM 0.75L	£ 15,275.36	Silverhand
Silverhand Blanc de Blancs 0.75L	£ 9,677.06	Silverhand
Silverhand Solaris 0.75L	£ 11,169.14	Silverhand
Silverhand Chardonnay 0.75L	£ 7,506.01	Silverhand
Wine Cooler	£ 368.34	Non Silverhand
Teal Stoppers	£ 1,248.84	Non Silverhand
Corkscrew - Black & Silver	£ 226.68	Non Silverhand
Teal Blanket	£ 113.03	Non Silverhand
Steel Single Bottle Wine Cooler	£ 144.38	Non Silverhand
Silverhand Wool (Small Bundle) White/Cream	£ 251.03	Silverhand
Small Clear Ice Bucket	£ 40.00	Non Silverhand
Silverhand Tour & Tasting	£ 2,913.97	Silverhand
UP Rosé 0.75L	£ 2,328.31	Non Silverhand
Single Wooden Box WBC	£ 7.92	Non Silverhand
Silver Reign Sparkling Rosé 0.75L	£ 34,598.18	Silverhand
Silverhand Bacchus 0.75L	£ 2,792.31	Silverhand
Glass Of Wine	£ 4,735.62	Silverhand
Baseball Cap Navy Embroidered	£ 17.50	Non Silverhand
Silver Reign Brut Hamper	£ 382.23	Silverhand
Silverhand Brut NV Traditional Hamper	£ 4,494.22	Silverhand
Wine Flights	£ 73.33	Non Silverhand
Silver Reign Rose Hamper	£ 1,187.91	Silverhand
Silverhand Drinks	£ 449.14	Silverhand
Harlot Rosé Brut 0.75L	£ 33.33	Silverhand
Large Clear Ice Bucket	£ 94.25	Non Silverhand
Silverhand Still Collection Wooden Triple - Gift Set	£ 692.18	Silverhand
Silverhand KYNG 0.75L	£ 2,020.17	Silverhand
Silverhand Early Release Gamay	£ 618.75	Silverhand
Silverhand Clear Govino Flute 0.0237L	£ 17.08	Non Silverhand
UP Rouge 0.75L	£ 1,944.19	Non Silverhand
Berne La Grande Cuvee Red 0.75L	£ 1,153.74	Non Silverhand
UP White 0.75L	£ 563.53	Non Silverhand
Berne La Grande Cuvee White 0.75L	£ 203.38	Non Silverhand
Berne La Grande Cuvee Rose 0.75L	£ 468.00	Non Silverhand
UP 3 Bottle Gift Set	£ 130.00	Non Silverhand
Silver Reign Tasting Set	£ 29.17	Non Silverhand
ISO Clear Glasses	£ 214.06	Non Silverhand
UP Rosé 1.5L	£ 138.75	Non Silverhand
Sheep Soft Toy	£ 326.23	Non Silverhand
UP Rosé 3L	£ 64.17	Non Silverhand
Harlot Brut Rose 2020 0.25L Cans	£ 9.05	Silverhand
UP Govino Wine Glass 0.375L (Clear with Black Logo)	£ 3.33	Non Silverhand
Silverhand Honey 227g	£ 701.97	Silverhand
	£ 135,654.50	
Silverhand	£ 125,736.29	
Non Silverhand	£ 9,918.21	
Silverhand %	93%	

Appendix 2 – Photos of shop







Rear of agricultural building within which the wine shop and farm offices are located.

Appendix 3 – Photos of Brookers Farm wine making facilities





Appendix 4 – Photos of office



Appendix 5 – Millington Case



Appeal Decision

Site visit made on 23 July 2024

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 August 2024

Appeal Ref: APP/ M0655/ C/ 23/ 3322774

The Shepherd's Hut, Higher Oak Farm, Higher Lane, Lymm, Warrington, Cheshire WA13 0RG

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended (the 1990 Act).
- The appeal is made by Mr Kirk Robertson against an enforcement notice issued by Warrington Borough Council.
- The notice was issued on 21 April 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a retail use, car park and access, with associated hardstanding.
- The requirements of the notice are to:
 - a) Cease the use of the access onto Higher Lane for all non-agricultural vehicles;
 - b) Remove all compacted gravel / hardstanding from within the site;
 - c) Cease the use of the land as a car park;
 - d) Cease the sale and collection of produce and goods from the site, with the exception of:
 - Eggs and honey generated from the farming activity on the agricultural unit;
 - Imported produce which does not exceed 10% of the revenue generated from all sales from the site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the 1990 Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The enforcement notice is quashed.

Application for costs

1. An application for costs has been made by Mr Kirk Robertson against Warrington Borough Council. This is the subject of a separate Decision.

The Enforcement Notice

2. The enforcement notice alleges a material change of use of the land to a retail use, car park and access, with associated hardstanding. The land is that shown in red on the plan attached to the notice. This comprises a rectangular parcel of land adjacent to Higher Lane on which a shepherd's hut has been sited. The vehicular access was existing prior to the siting of the hut, and this remains in use for agricultural purposes. It would be necessary to cross the land subject to the notice to reach the surrounding fields. Consequently, I consider that the land is in a mixed use, which is two primary uses operating within the same planning unit.

3. Where there is a mixed use, it is not open to the local planning authority to decouple elements of it; the use is a single mixed use with all its component activities. The allegation should refer to all the components of the mixed use, even if only one is required to cease. Therefore, the notice should be corrected, if possible, to describe the mixed use properly. If the additional components are lawful, in this case the agricultural use, the requirements would not be varied, and the prospect of planning permission being granted by virtue of Section 173(11) of the 1990 Act would be of no concern.
4. I consider that the correct way to describe the alleged breach would be the material change of use of the land to a mixed use as agriculture and a retail use, through the siting of a shepherd's hut for retail purposes, facilitated by hardstanding. The requirements would flow from the allegation, as follows (i) cease the mixed use through ceasing the retail use of the land; (ii) remove the shepherd's hut from the land; (iii) remove all hardstanding from the area shown blue on the attached plan, which would allow the Council to be clear about which areas of hardstanding are targeted.
5. There would be no need to cease the use of the access for non-agricultural vehicles, as set out in requirement (a) of the notice or cease the use of the car park, requirement (c), since these elements are intrinsic to the retail use and would be covered by the first requirement.
6. However, I consider that making such a correction would cause injustice to the Council because I am uncertain as to what the notice is seeking to achieve. Crucially, the shepherd's hut is not mentioned in the notice. It would be necessary to specify the hut since it facilitates the change of use as it is where the sales take place. The notice may require the removal of the hut, as suggested above, if this would be necessary to prevent the breach from re-occurring. Alternatively, it may remain if the Council were satisfied it would serve some other lawful purpose. In that case, the shepherd's hut would not be covered by the requirements.
7. The fact that the shepherd's hut is not included either in the allegation or the requirements indicates that the omission may be intentional because the Council considers it would serve a lawful purpose. That would be the sale and collection of produce and goods limited to "eggs and honey generated from the farming activity of the agricultural unit", or "imported produce which does not exceed 10 percent of the revenue". These matters are specified in requirement (d) and suggest that the use of the shepherd's hut for these purposes would be considered lawful.
8. However, there would be no need to specify the level at which retail activity could be continued at the site. If no material change of use occurs, then there would be no breach of planning control. Alternatively, it is stated that the purpose of the notice is to remedy the injury to amenity as opposed to remedying the breach of planning control. It may be that the Council would be happy for the sales to continue at restricted levels as it considers this would address the perceived harm.
9. Irrespective of requirement (d), the other steps indicate the intention was for the hut to be removed. The requirement to remove the compacted gravel / hardstanding from within the site would include that on which the shepherd's hut is sited and the requirement to cease the use of the land as a car park would apply to any level of use.

10. I note that the Council has advised that the corrections would provide greater accuracy in describing the breach and ensuring there is no recurrence. It also considers that the corrections would not cause injustice. However, I disagree because, as explained, I am unclear as to what the Council is trying to achieve regarding the shepherd's hut and, hence, the statutory purpose behind the notice.
11. Moreover, I consider that correcting the notice in the way set out above would cause injustice to the appellant. This is because I would be including a requirement to remove the shepherd's hut, which would make the notice more onerous. If I were to omit the requirement to remove the hut, an ambiguity would remain due to the contradictions between the requirements. Overall, I am not satisfied that I can make the corrections without injustice to both the Council and the appellant.

Conclusion

12. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
13. In these circumstances, the appeals on the grounds set out in section 174(2) (a), (b), (c) and (f) of the 1990 Act, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

14. The enforcement notice is quashed.

D Moore

Inspector



Costs Decision

Site visit made on 23 July 2024

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 August 2024

Costs application in relation to Appeal Ref: APP/ M0655/ C/ 23/ 3322774
The She**pherd's Hut**, Higher Oak Farm, Higher Lane, Lymm, Warrington,
Cheshire WA13 0RG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Kirk Robertson for a full award of costs against Warrington Borough Council.
 - The appeal was against an enforcement notice alleging the material change of use of the land to a retail use, car park and access, with associated hardstanding.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant claims that the Council has acted unreasonably by failing to engage prior to issuing the notice despite several attempts by the appellant. It is argued that the matters alleged have not occurred as a matter of fact. Further, the notice contains ambiguities, which has resulted in an unnecessary appeal and wasted expense.
4. The Council maintains that it carried out extensive investigation prior to taking enforcement action. It is satisfied that the breach of planning control has occurred as described in the notice. There is no record of the appellant seeking to address matters before formal action was taken.
5. Firstly, it is not clear that the appeal was bound to succeed on ground (b), that the matters alleged have not occurred as a matter of fact. Nor is there evidence to support the appellant's claim that the Council failed to engage prior to issuing the enforcement notice.
6. However, the PPG advises that, for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate.
7. As explained in my Decision, the notice was found to be invalid. This was due to a failure to properly describe the breach of planning control and the steps

required for compliance. I accept that the Council carried out prior investigation, but this did not translate into ensuring the notice was accurate. In this instance, I find that issuing the invalid notice amounts to unreasonable behaviour.

8. It is not certain that the evidence gathered in relation to this appeal would be relevant should the Council seek to take further action or should the appellant seek a Lawful Development Certificate or a planning permission. Any further evidence would be dependent on the circumstances and that produced in relation to these appeals may or may not be relevant.
9. If the notice had been properly drafted, the appeal would have continued, and the appellant would not have been put to the further cost of any future enforcement action or application processes.

Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Warrington Borough Council shall pay to Mr Kirk Robertson, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Warrington Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Moore

Inspector

Appendix 6 - APP/K6920/D/99/513513



Penderfyniad ar yr apêl

ymweliad a safle cynhaliwyd ar 10/04/2000

Appeal Decision

site visit held on 10/04/2000

gan/by Clive Cochrane DipArch RegArch MSc MRTPI

Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru

an Inspector appointed by the National
Assembly for Wales

Dyddiad/Date 25-05-2000

Appeal Ref: APP/K6920/D/99/513513

Site address: Land adjacent to the Rowan Tree Public House, Caerphilly Road, Nelson

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a lawful development certificate (LDC).
- The appeal is made by Mr J D Matthews against Caerphilly County Borough Council.
- The application (ref:P/99/0523) dated 16/06/99 was refused by the Council on 05/08/99
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990.
- The use for which a Certificate of Lawfulness is sought is the sale of meat products produced on the holding, plus not more than 10% imported (frozen chickens and bacon only).

Summary of decision: The appeal is allowed and a Certificate of Lawfulness in the terms set out in the attached schedule is issued.

Procedural matters

1. The Council refused to grant a Lawful Development Certificate for the proposed use for 2 reasons:-
 - (a) The sale of meat products which are prepared and adapted for sale by processes which are undertaken elsewhere are not ancillary to agriculture on the holding, and therefore the proposed use does not fall within scope of section 173(11) of the Town and Country Planning Act 1990; and
 - (b) The sale of imported goods (frozen chickens and bacon) is a retail use which is not ancillary to the principal agricultural use of the land.

The main issue

2. The issue to be decided in this appeal is whether or not the Council's decision to refuse to grant a Lawful Development Certificate is well founded.

Reasons and conclusions

3. As explained in paragraph 9 of the Inspector's decision on the appeal against the earlier enforcement notice (Ref: APP/K6920/C/98/512556/P3, 27/04/99), section 173(11) of the Act provides that where the enforcement notice could have required a use to cease, but did not do so, and all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission is deemed to be granted for that use. As the notice has now been fully complied with, section 173(11) would seem to grant planning permission for the retail sale of "goods, articles and produce", which have been produced or grown on the farm.

4. However, this does not address the question as to whether planning permission is needed at all for the sale of produce from a farm holding. The sale of goods produced on a farm, from the farm premises, is not normally regarded as being development comprising a change of use of the land, and therefore it could not have been enforced against. The carrying out of a use incidental to the lawful primary use would not be in breach of planning control. It was recently held in *Millington v SSETR and Atcham BC* QBD 30.10.98 & CoA 25.6.99 that the processing of a crop so as to produce an identifiably different product after it had been removed from the soil could be regarded as part of the agricultural use. The test is whether the activity could be regarded as incidental to the agricultural use or consequential on the agricultural operations of producing goods. This use involves a farm shop for the sale of the produce of the land, which seems to me to be a normal activity for a farmer engaged in beef, lamb or pork rearing.
5. Such an activity is lawful, and according to the principle arising from *Mansi v Elstree RDC & MHLG* (1964) 189 EG 341, such lawful uses as the sale of produce from a nursery gardens should be safeguarded in any ensuing enforcement action. The Council appears to recognise the lawfulness of the proposed use, by limiting the requirements of the 1998 enforcement notice to cease the sale of only those goods not produced or grown on the farm. Accordingly, even if it were concluded, as the Council now says, that the proposed sale of meat products from the farm would constitute a separate A1 retail use, that would still be lawful by virtue of the provision of section 173(11), which grants the use a deemed planning permission.
6. With regard to the proposed sales of 10% imported goods from the site, it is a matter of fact and degree as to whether the scale of importation is small enough not to amount to a material change of use of the planning unit from agriculture to retail. Clearly, as a proportion of total sales of meat from the site, 10% imported goods is *de minimis* and would not amount to a change of use. Therefore, looked at as a whole, the proposed activity does not amount to a change of use of the site to a separate Class A1 retail use, because the sales as described in the application would be ancillary to the agricultural use.
7. For the reasons given above I am satisfied, on the evidence now available, that the Council's refusal to grant an LDC in respect of the sale of meat products produced on the holding, plus not more than 10% imported (frozen chickens and bacon only) was not well-founded and that the appeal should succeed. I shall exercise the powers transferred to me in section 195(2) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.

Formal decision

8. The appeal is allowed and a Certificate of Lawfulness describing the proposed use, which I consider to be lawful, is attached to this decision.

C. I. Gormane

INSPECTOR



Tystysgrif Datblygiad Cyfreithlon

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 (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 16 June 1999 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would be ancillary to the main agricultural use of the land and does not require planning permission, and it does not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed ...

Clive I Cochrane
Inspector

Date **25-05-2000**

Reference: APP/K6920/D/99/513513

First Schedule

The sale of meat products produced on the holding, plus not more than 10% imported (frozen chickens and bacon only).

Second Schedule

Land adjacent to the Rowan Tree Public House, Caerphilly Road, Nelson.

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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.
4. 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.



Cynllun

Plan

This is the plan referred to in the Lawful Development Certificate dated: **25-05-2000**

Inspector **CLIVE COCHRANE** DipArch RegArch MSc MRTPI

Land adjacent to the Rowan Tree Public House, Caerphilly Road, Nelson

Reference: **APP/K6920/D/99/513513**

Scale: **1:1250**

