

Delegated Report

Lawful Development Certificate (existing)

Application no:	20250839
Location	Brookers Farm Luddesdown Road Luddesdown Gravesend
Proposal:	Application for an Existing Lawful Development Certificate for the continued 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.
Applicant:	Mr Steve Chappell, Vineyard Farms Ltd
Site Visit	N/A Desktop Assessment

Plans & Documents

Application form
Statement of Case
Drawing no. DHA/35449/100 (site location plan)
Drawing no. DHA/35449/101 (block plan)
Drawing no. DHA/35449/104 (existing/proposed elevations)
Drawing no. DHA/35449/103 (existing/proposed first floor plan)
Drawing no. DHA/35449/102 (existing/proposed ground floor plan)

Property Type

The property comprises an agricultural barn within a yard where wine is produced and meets the definition of 'agriculture'. The application has come about as a result of planning enforcement investigations.

Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Relevant Planning History

20240039	Prior notification under Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from an agricultural building to a flexible use as offices and off licence (Use Class E).	Refused	02.04.2024
19880177	Erection of two agricultural buildings to form grain store, workshop/general purposes building.	Permitted	23.05.1988

Consultations

As this is an application for a lawful development certificate consultations are not required however the following responses have been received:

Dickens' Country Protection Society

The Society would wish to comment that the site is in an area where Green Belt Policies apply and the North Downs National Landscape. The Society is concerned at the retail element of this application. The Golden Lion is providing refreshment facilities and a low intensity retail element could expand and therefore any consent needs to be qualified.

Six letters from neighbouring properties:

- Officers should take into account how many of these applications are retrospective
- The application is part of a major industrialisation and urbanisation of a small village and must have planning permission
- The area is struggling to retain its tranquillity and beauty under the weight of a huge increase in HGV traffic and general urbanisation in an area of protected downs
- A series of impact assessments are not available for public viewing
- The activities taking place constitute a material change of use from agricultural to commercial/retail and permission is required

Background

Planning application reference 19880177 granted permission for the two barns on the site and imposed the following conditions:

SUBJECT TO THE CONDITIONS SPECIFIED hereunder:-

- (i) The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which this permission is granted.
- (11) The grain store and workshop/general purposes building hereby permitted shall be used for agricultural purposes in connection with the agricultural operations at Luddesdown Organic Farms Ltd., and for no other purpose (including any purpose within the Classes B1, B2 and B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to those Classes in any statutory instrument revoking and re-enacting that Order).
- (111) Details and samples of the following matters shall be submitted to and approved in writing by the District Planning Authority prior to the commencement of works on the site.
- (a) type and staining of kent boarding.
 - (b) facing brickwork

cont/d.....

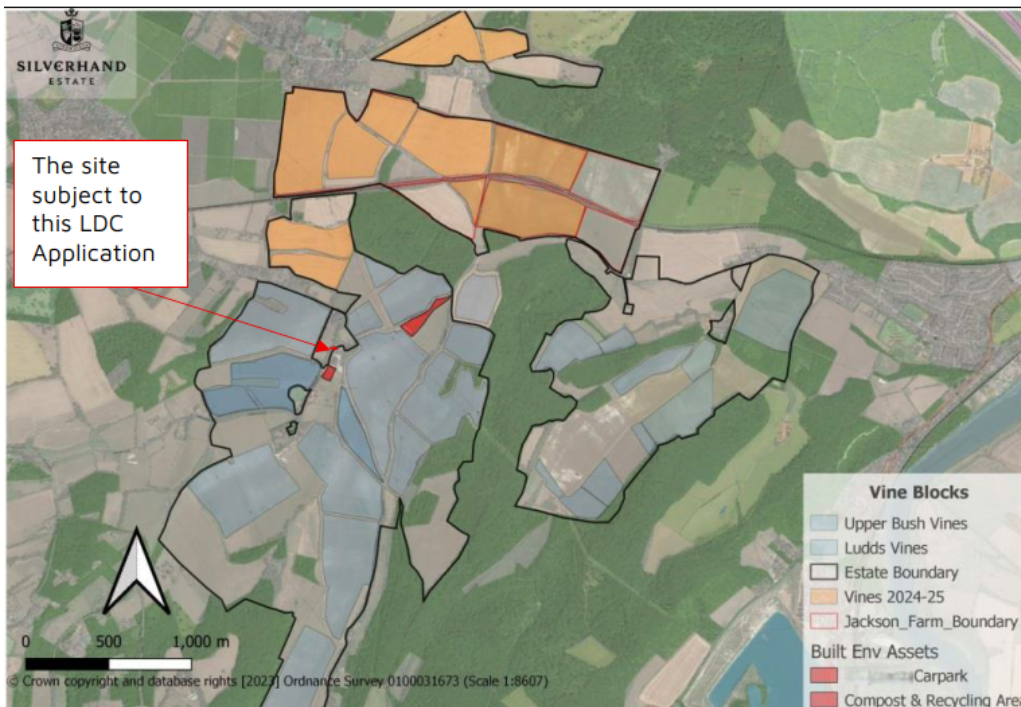
Planning application 20240039 sought prior notification under Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from an agricultural building to a flexible use as offices and off licence (Use Class E). This was refused on the basis that the above permission for the barn removed permitted development rights and therefore a change of use would require planning permission. This lawful development certificate shows a smaller mezzanine and less office space at first floor. The ground floor shows a similar level of accommodation compared to the prior application. The applicants are seeking a certificate to confirm that the proposed shop and offices are ancillary to the barns legal use.

Officer Assessment

The site is located within Luddesdown which is within the Kent Downs National Landscape and the Green Belt. The Lion public house is located to the west of the site. The site layout is shown below:



The whole site/estate is shown below:



Offices

The farm offices within the agricultural building have been in use since February 2020 and an extension was made to these in July 2025 to accommodate the growing business and staff requirements. The offices are above the wine shop built as an internal mezzanine. This contains two rooms with approx. 10 desks and is used for farm employees associated with the day to day running of the estate. Offices are reasonably expected at farms and the amount would not appear to be excessive given the size of the operations and is considered ancillary to the agricultural use.

Farm Shop

The shop is located to the east of the existing pub and is accessed from its car park. The staff access the shop from the farmyard to the south. The conversion of part of the agricultural building into the 'Cellar Shop' to enable the sale of wine and other farm produce began in March 2024 with the shop opening on 20 May 2024.

The Millington case (Millington v Secretary of State for the Environment, Transport and the Regions 1999) accepts that a winery located within a vineyard falls within the definition of an agricultural use for Green Belt purposes. This was corroborated for this business in the Inspectors report for the appeal at Bush Road, Cuxton by Vineyard Farms Ltd (APP/A2280/W/22/3307648 – appendix 1).

In its very limited advice on farm shops, paragraph 6 of the now superseded Appendix C to *A Farmer's Guide to the Planning System*, issued jointly by ODPM and Defra in 2002, pointed out that: *"It is normally assumed that the use of a farm shop only for the sale of unprocessed goods produced on that farm is a use which is ancillary to the use as a farm, and therefore does not require specific planning permission. However, use as a farm shop selling a significant amount of produce from elsewhere is a separate use and therefore requires planning permission"*.

This advice was supported by court decisions such as *Williams v M.H.L.G. & another* 1967. As demonstrated in Bournemouth 13/07/1984 (APP/5186/C/83/611, 613 – appendix 2), the “ancillary principle” applies regardless of the scale of the operation. In that case, the SoS stated that the sale of eggs from a poultry farm was ancillary “no matter what the numbers involved.”

Case law generally states that a farm shop selling approx. 10% of goods that are not produced on site can be considered ancillary however, anything over this amount is likely to not be considered *de minimis*. One Inspector found that 20% of imported produce from other farms was a considerable proportion and therefore the shop could not be considered incidental to the agricultural use of the farm (APP/D3505/X/10/2134344 – appendix 3).

In another case, it was noted that the amounts of imported goods and produce sold at a farm shop were well above the *de minimis* level, having regard to case law and that piglets reared on the site were slaughtered and packed elsewhere before sale and these intermediate processes broke the ‘ancillary’ link (APP/A/94/507721 – appendix 4).

In some cases the Inspectors have looked at both the weight and value of sale. In another case an Inspector agreed that 10% of imported sales was a very small element of sales however, as the holding was fragmented and not one planning unit, the percentage of imported goods would be higher and permission was required.

Where a farm is fragmented Inspectors have taken the view that, if the produce has come from land outside of the planning unit, this must be regarded as imported for the purpose of determining whether retailing was ancillary. If imported produce comprised a substantial proportion of the goods sold it would be considered well beyond what could be called *de minimis*.

The majority of the sales from the ‘Cellar Door’ shop is wine made using grapes grown on the estate and pressed, matured and bottled in the facilities shown in the image above. In addition to this there are associated sales of items such as wine buckets, coolers etc which amount to no more than 10% of the sales. Sales figures have been provided to corroborate this claim together with a statement from the CEO. Occasionally the shop is used as part of the vineyard tours operated by Vineyard Farms Ltd for wine tasting and to show videos giving an overview of the operation of the estate.

The applicants have made reference to the Millington case and its relevance to this application. They have also made reference to appeals where shops have sold no more than 10% of imported goods and were still considered ancillary.

Balance of Probability

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 local planning authority gain information to the contrary this must be shared with the applicant and they must be given the opportunity to comment on it.

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.

If the LPA has no evidence to the contrary to contradict the applicants claims then there is no good reason to refuse the application.

In this case the farm offices do not dominate the building and are of a size that is reasonably expected for an agricultural operation of this extent. They are considered ancillary to the agricultural use and a certificate can be issued.

The farm shop known as the 'Cellar Door', on the balance of probabilities, is also ancillary to the agricultural use of the land. The shop is modest in size and 93% of the sales are goods produced from the land. The farm is not fragmented and the produce is grown, bottled and labelled on the site. Case law determines that, in instances such as this, a farm shop would be considered *de minimis* and therefore ancillary to the main agricultural use.

It is noted that there is a planning condition on the permission granted for the building restricting the use however, this restricts the principle use of the building. It does not impact ancillary uses.

The applicant should be advised that, if at any point, the sale of imported (from outside the farm) goods increases to over 10% of the total income from the shop, then planning permission is likely to be required for a change of use.

The local planning authority has no evidence that the information submitted is not correct and therefore, on the balance of probabilities, a lawful development certificate can be issued for the shop.

Recommendation: <u>Grant</u> Lawful Development Certificate
--

Case Officer:	Mrs Alison Webster	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	8th October 2025	Dated:	15th October 2025