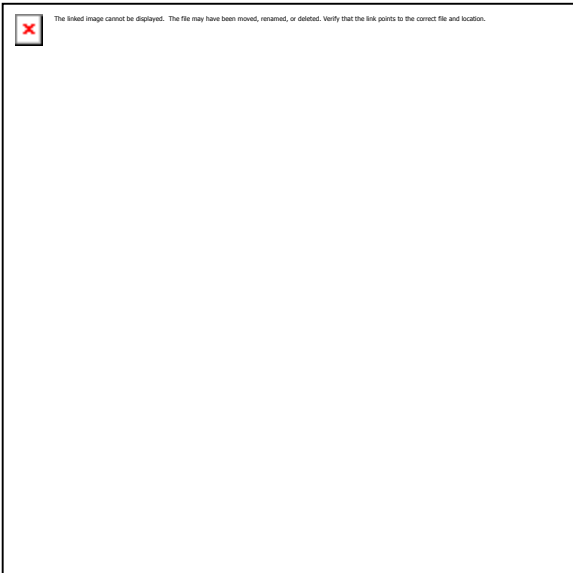




Delegated Report

Lawful Development Certificate (Existing)

Application no: 20211451

Location: Land Known As Greenacre Lockyers Hill Luddesdown Kent

Description: Application for Lawful Development Certificate in respect of the existing 4 buildings and 2 containers for agricultural use and a touring caravan.

Applicant: Mrs P Underwood

Site Visit Date: N/A Desktop Assessment

Plans & Documents

Planning application form received 25 November 2021.

Supporting Statement received 25 November 2021.

Supporting Statement from applicant received 26 November 2021.

Supporting Statement from B.J. received 26 November 2021.

Drawing no. 500/BJ/003/B (existing floor plans and elevations – structure A, mobile home and caravan) received 30 November 2021.

Drawing no. 500/BJ/004 (existing floor plans and elevations – structure B, C and D) received 25 November 2021.

Drawing no. 500/BJ/005 (existing floor plans and elevations – containers and well) received 25 November 2021.

Drawing no. 500/BJ/002 (proposed site layout) received 25 November 2021.

Drawing no. 500/BJ/001 (location plan) received 25 November 2021.

Property Type

The site is an open field located within the green belt. There are buildings, caravans and storage containers together with vehicles on the site.

Development Plan

Due to the nature of this application, the adopted plan and national planning policies are not relevant since it relates to whether the buildings and use of the land is immune from enforcement action due to the passage of time.

Planning Legislation

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

Relevant Planning History

20051048	Erection of a single storey detached replacement dwelling with rooms in the roof space and installation of a rainwater harvesting system and biotank domestic sewage system.	Refused, appeal dismissed.	26.01.2006
19520021	Stationing of caravan in connection with smallholding	Refused	30.05.1952

Consultations

Nine neighbouring properties have been consulted. 11 letters of objection have been received and one letter of support. The main issue raised from the objections are listed below:

- No one has resided at this address until the first lockdown in 2020. The caravan appeared then the land was cleared and a further static home appeared. To state that the land has been used continually for residential occupation for a period of 10 years is completely untrue.
- The site is an eyesore in an area of outstanding natural beauty of the North Downs.
- The site, until recently was used for grazing horses. It has never been a smallholding. Since the last planning application was refused it has become a dumping ground for building rubbish. Over time two shipping containers were also dumped there along with two white dilapidated vans and garden rubbish. As for the claim relating to the existing buildings, these were equestrian related and in a state of collapse. Recently (within the last three years) the owners have brought a mobile home and a camper van, which they now occupy. The site has never been occupied prior to this time.
- I would like to register my objection to this application on the grounds of it being inappropriate for an area designated as being of outstanding natural beauty. As a local resident of Luddesdown I also believe that the caravans referred to have been put in place in the last couple of years rather than over a longer period.
- The property is situated in an area of both Green Belt and AONB. I have lived near the property over 50 years and I believe the buildings have been dilapidated since I can remember but there were no caravans or other dwellings in the past. However I believe the caravan is a recent addition and came onto the property around the first lockdown or about 2 years ago. I object to any development on this site.
- The applicant claims that the property has been continually resided in for the last ten years which is not true. The property, as I have seen it for the last sixteen years, is of an unkept mess and a dumping ground. In that time, I've never seen or noticed any repairs, maintenance or tidy-up done to the original buildings/land to suggest they are being cared for by someone on a regular basis. I have only ever noticed the mess, which I think had been created to hide the structures that should not have been placed there without permission. Overgrown trees have also formed a screen from passers-by seeing into the property.

I regularly walk my dogs past this property, and last march 2020 when we were all supposed to be in lockdown, I suddenly noticed someone was living there. A mobile home and caravan had moved on to the land and since then they have been living there permanently.

- The land has never been used for agriculture in 70 years. The current owners planning application was refused and the site has been a dumping ground ever since. Two containers, mobile home and touring caravan are recent acquisitions moved onto the property without permission and hidden behind bushes. The owner has a property in Surrey but chooses to live at Greenacre illegally for over a year.
- I would formally like to object to this application. The development can clearly be seen from the roadside whilst walking past and would impact the openness of the area. The erection of 4 buildings and 2 containers would be overdevelopment in an AONB. I cannot see how 2 containers would not look ugly and out of character for the area.
- We have lived close to Greenacres for around five years. When we arrived in the area we instantly noticed all the garden waste and building debris along with shipping containers and general littering at Greenacres. I would often see the owners appear with a van and trailer to dump more on to the ground. In 2019 there was a lot more activity at Greenacres as they started to cut and clear large trees so they could make room for their mobile homes and caravans. They have continued to cut trees and there are some stumps still visible. By March 2020 they had moved onsite and were living there permanently. Proudly discussing with neighbours that they were getting water from the garage for free and using a generator. They own a property and do not need to be living in a caravan. They choose to do this as they want to build a house there. They have told me so. Approximately, two weeks ago I watched a recovery truck bring another piece of junk (motorhome) to Greenacres. The motorhome was too heavy to be pulled up the hill and so caused a bit of a problem in the lane and then was driven around the back lanes to get dropped off at Greenacres. I believe there is no way this can be moved without a tow truck so it is not going to be used as a touring caravan! As for the buildings and units being used for agricultural use. These people are not farmers and do not keep farm animals so I cannot imagine what use they will have for the buildings within agriculture.
- Green acres had horses kept there but has not had any animals on the property since 1998-1999. It has been derelict for at least 15 years. Greenacres is in an AONB area and also is opposite Luxon wood which is ancient woodland and I would expect that Greenacres is also ancient woodland? Allowing caravans on this site is not only an eyesore but will open up the floodgates for others to be start living in caravans in fields and woodland. This applications is nothing more than them trying to get permission to continue to live at Greenacres and should not be granted. Enforcement should be involved to remove them from living there. They are putting out rubbish weekly for the binmen but how is this allowed when they don't pay taxes?
- The caravan in question was towed on site at the beginning of 2020 just prior to the Covid 19 lockdown. There was no one living on site prior to this date.

My observations are based on my knowledge of the property (I used to know the tenants prior to the current owners) and my fairly regularly pass the property on the road.
- Knew previous owner. Used stables and paddocks. Travelled from Cuxton and went home each day. There was never any residential use. He owned a tractor and this was kept at Luxon Farm. Shortly after the sale the land became used for dumping builders rubble. The well was ornamental and had no practical purpose. The plot does not have electricity supplies or sewerage disposal.

Dickens' Country Protection Society

The Society would wish to object to this application on the grounds that the site is in an area within which Green Belt Policies apply and The North Downs Area of Outstanding Natural Beauty. No evidence has been adduced to support an agricultural use and the site would not appear large enough to support significant agricultural activity. New residential uses would not normally be permitted in the Green Belt and no grounds have been put forward to warrant overriding Green Belt Policy.

Luddesdown Parish Council

The Parish Council wishes to object to this application for a lawful development certificate for the above site

on the following grounds –

There is insufficient evidence to support the claim there has been continuous occupation of the site for the last ten years, anecdotal comments received from parish residents suggest the caravan currently located on site was not present until circa December 2019. This has also been supported by photographs provided to the Parish Council, that we enclose, which were taken in 2016 and show the site did not have caravan present, the only objects being an abandoned van, a storage container and large amounts of rubbish.

Historically the site was used for grazing for one or two horses, hence the provision of a water supply. Upon the present owner's purchase of the property, they wished to construct a property for which they were unable to secure planning permission. The site then remained unmaintained for a number of years and certainly there was no occupation of the site.

As we previously mentioned, it wasn't until circa December 2019 that a static caravan appeared along with a campervan and other vehicles. The Parish Council also wishes to add that it was noted in the inspector's appeal for application 20051048 that the buildings on the site were used for agricultural purposes and had not been used as dwellings for some considerable time. Therefore, the current claim of the site being used for residential purposes for a period of fifty years as referred to in Mr BJ's statement is incorrect.

Finally, the Parish Council also wishes to object on the grounds that if this were to be granted, we believe it would enable further inappropriate development of the site to occur that would lead to a harming of the openness of the Greenbelt and a detrimental impact on the Area of Outstanding Natural Beauty and Special Landscape Area.

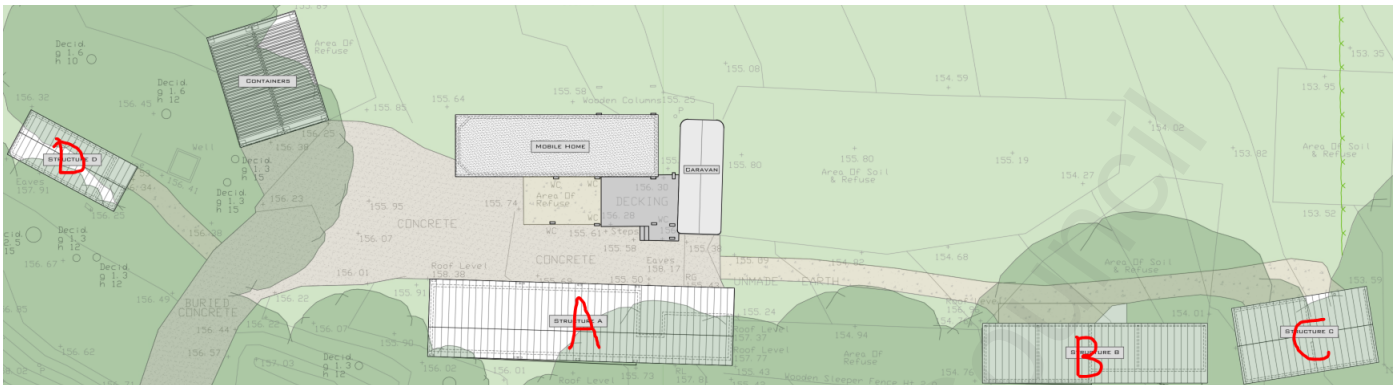
Officer Assessment

This application is for a Lawful Development Certificate in respect of the existing 4 buildings and 2 containers for agricultural use and a touring caravan. The application claims that the buildings, container and touring caravan have been on site for over 10 years and therefore are immune from enforcement action. Question 7 of the application form states that the use/activity began on 1 January 1960.



The application is supported by a statement from the applicant. This states:

The land was purchased on 1 July 2003 under titles K338841 and K775295. The land relied on a right of way over Lockyers Hill and so title K885977 was purchased on 31 May 2005. When purchasing the land it included structure A, B, C and D:



Structure A had been used for residential purposes given its residential appearance and furniture inside. The neighbours had said the previous owner used it as a weekend or seasonal retreat during the 1950s after it was built in the 1940s. There is water to this and a working well.

Structure B had been used as a stables and C as an outhouse with a toilet in it. Structure D was used as a workshop and had machinery left in it. The condition of the buildings in 2004 was good.

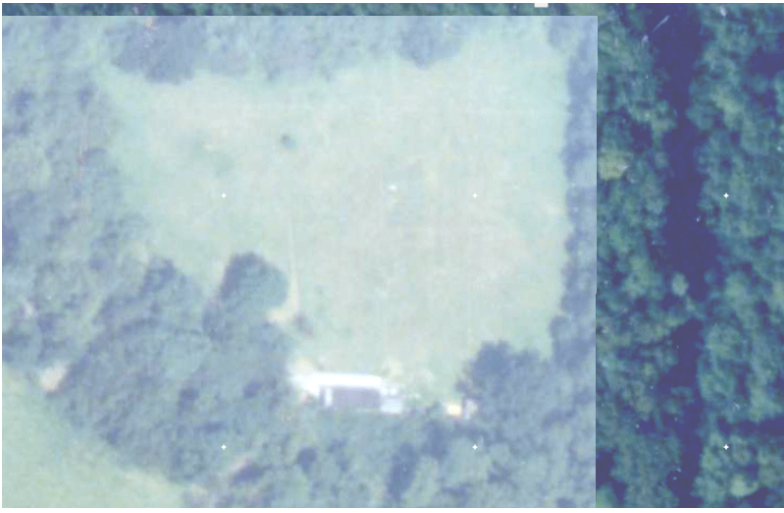
The land was used for agricultural and retreat purposes. There were a number of thefts. Storage containers were then brought onto the site (shown between structures D and A). An application for residential development was submitted (ref: 20051048), refused and subsequently dismissed at appeal (appendix 1) in 2006. It was dismissed at appeal in November 2006. In order to further deter vandals and thieves a touring caravan was placed on site in 2009. BJ took up residence when he could. In the period between 2009 and 2020 the applicant and BJ often stayed in the touring caravan when visiting the site, sometimes over night and sometimes for a long weekend. Shortly prior to the March 2020 the decision was made to isolate at the site in the touring caravan. In order to provide more space and privacy for the two of them mobile home was delivered in September 2020. A decking area was constructed. The applicant believes that, as these structures are easily removable, they are not permanent structures. The applicant has confirmed that her consultant advised that structures A, B, C and D and the steel containers and touring caravan had been situated on the land for a period in excess of 10 years and therefore are lawful. He advised that the mobile home and decking would not be deemed lawful and should be removed from the site.

A statement has also been provided from Mr BJ who is a relative of the applicant. This states:

Structure A had many elements that supports the conclusion that it has been in residential use such as masonry construction to the walls, residential windows, doorways and lined internally. The lined walls have wallpaper on them. The building is compact but has four separate residential spaces. Structures B and C are not residential and have been used for agricultural purposes. Structure D appeared to be a machine shed. The depth of the well exceeds 4m and there is a water supply. Regular maintenance work has been undertaken but the floor area has never been altered. The steel containers were positioned on site to store machinery and equipment to do with the maintenance of the land. These were delivered on 10 November 2004. The break-ins and damage continued throughout 2005 and culminated in a planning application being submitted for a dwelling on the site. This was refused and dismissed at appeal in 2006. In order to deter thieves a touring caravan was purchased and placed on the land in 2009. It was used overnight for weekends and helped expand his landscape business. The caravan has been moved around but has remained on site. During the lockdown a touring caravan was delivered in order for the applicant and Bryan to isolate in August 2020. The decking was built to provide an area to relax after working on the land.

Ariel photos of the buildings:

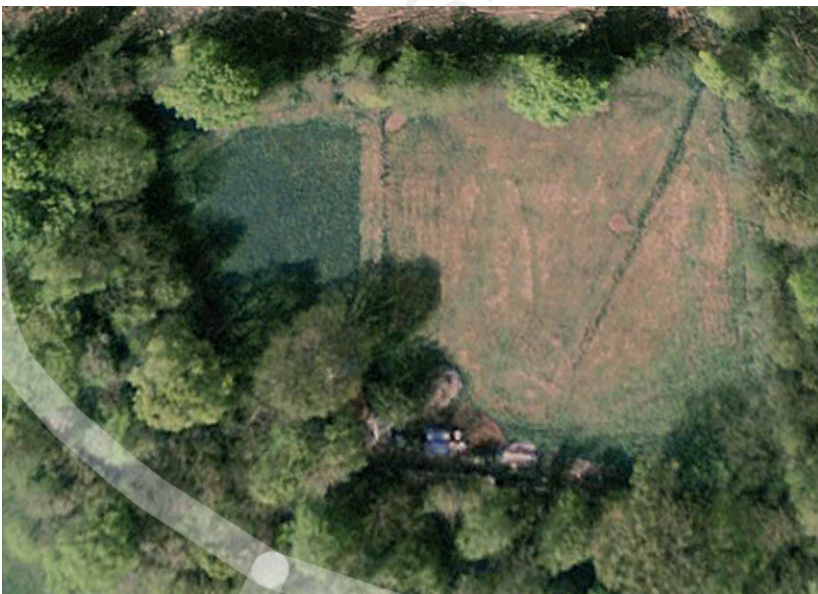
1990 (KLIS) – same image as Google Earth. Buildings A and B can be seen:



Google Earth 2003 appears to show building A:



Google Earth 2007 shows some buildings:



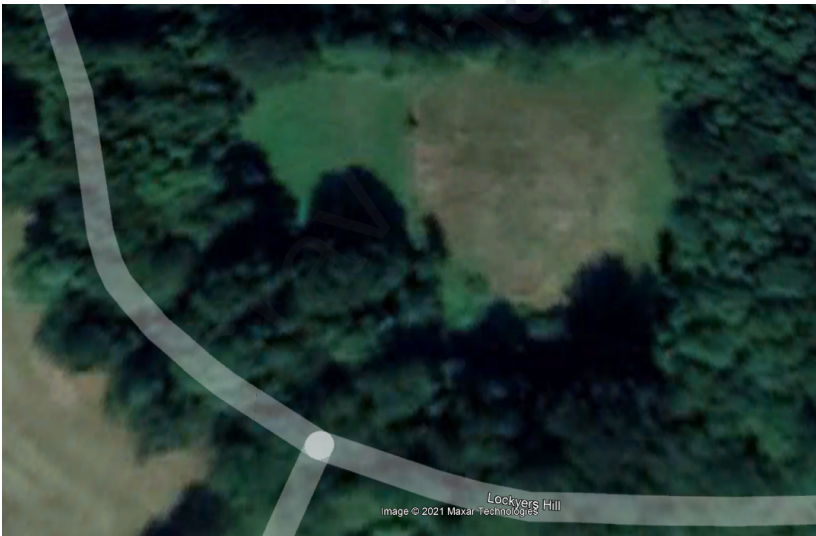
2008 (KLIS) shows no definitive answer as to whether buildings were on site but there is definitely activity:



Google Earth - March 2011. The buildings are not clear but there is activity on the site:



Google Earth 2012 appears to show building A but is unclear:



Google Street view Feb 2009:



This image shows structure D to the left, the storage containers in the middle and structure A to the right.

A different angle shows the storage container with what appears to be a caravan behind:



Also, from 2009:



This shows structure B and structure D. Another picture shows them from a different angle:



Use of the buildings/land:

The 2005 planning application form states the use of the land as part vacant and part stabling. The appeal decision describes the site as an open field with several small structures clustered close to the entrance of generally poor state of repair that appeared to be used for storage or shelter. The appeal also states that

'although one of the existing structures is also described as a bungalow, it as a stable like appearance and, as I saw on site, there is little evidence to suggest it has been recently occupied'. He went on to say 'I therefore conclude that the existing structure has an authorised use.' (APP/K2230/A/06/2020177 – appendix 1).

In response to the statements:

Structure A – it is clear from the street view photos from 2009 and aerial photos that this building has been in situ for more than 10 years and therefore is immune from enforcement action. The use however is less clear. The applicant's statement says it has been used for residential purposes, has a residential appearance and has furniture inside. However, there is no evidence that this is the case. The presence of furniture alone is not proof of a continuous residential use. This was also the case at Great Gorse Shaw where a lawful development certificate was refused because the use could not be proved despite furniture and other residential paraphernalia being present inside the building. The Inspector in his report was clear 'any furnishings and storage within the building, along with a new gate and fencing installed for security purposes only gives an indication that the appellant has started to upgrade the site.' (APP/K2230/X/19/3242863 – appendix 2).

The Inspector in the 2005 appeal was also clear that this structure did not have an authorised use.

Therefore Structure A is immune from enforcement action but it has no continuous use. Any future use of this building would therefore require planning permission.

Structures B and C to the east of A are also clear to see from the google street view image in 2009. These are dilapidated but it is clear that B was a stables. This is unrefuted and backed up by neighbours' comments. This would indicate the land had an equestrian use at some point. It is not clear when this use ended but it would appear to be when the current owner purchased the land in 2004. These two buildings therefore are immune from enforcement action due to the passage of time but do not have a continuous use. Any future use of these buildings would therefore require planning permission.

It is not clear when structure D was built however this is also clearly visible in the street view images from 2009. Again, the statement says that machinery was found in this and therefore it was likely to be used for storage or as a workshop by the previous owners prior to 2004. There is no proof of any continuous use of this building up to the date of the application.

The applicant has provided evidence of storage containers being delivered to the site in 2004. These can be seen in the street view images also and therefore are immune from enforcement action. It appears from the statements that these have been used for storage as they have been broken into a number of times and items have been stolen. The lawful use for these, on the balance of probabilities, is for storage.

The touring caravan is shown in the google images from 2009 also and is therefore immune from enforcement action due to the passage of time. The frequency of its use is not clear as the statement from Mr BJ just says it was used overnight for weekends and the applicant states Mr BJ took up residence 'when he could'. There is nothing to corroborate this statement. It would appear from neighbours' letters that the residential use only became regular in the first lockdown (March 2020).

The claim that the land has been used for agricultural and retreat purposes is similar to the claim made at Great Gorse Shaw (20190867) but no supporting evidence has been provided. The land therefore does not fall within any particular use class. It appears to have been in equestrian use prior to the purchase by the current owner and since then has been visited irregularly for maintenance purposes. The static caravan appeared in 2020 and associated decking soon after. These are not lawful and the applicant's agent has acknowledged this and advised his client to remove these.

Conclusion:

The main issue in this application is whether, on the balance of probability, the use and operations were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

There is little doubt that structures A, B, C and D, the storage container and touring caravan have been on site for more than 10 years however, their use in connection with the agricultural use of the land is in question. The land, in the Council's opinion, has not been used as agricultural land for the last 10 years. The statements cite various different uses for the buildings including residential but none of this has been

corroborated.

The onus is on the applicant to demonstrate, on the balance of probability, that, at the date of the application, the use and operations had acquired lawfulness due to their immunity from planning enforcement action. In essence that the burden of proof has not been satisfactorily discharged in this instance.

In conclusion it would appear the land and the buildings have no authorised use and therefore a certificate in respect of the existing 4 buildings and 2 containers for agricultural use and a touring caravan cannot be granted.

The application therefore must fail.

Recommendation:

Refuse

See draft Decision

Case Officer:	Mrs Alison Webster	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	24th January 2022	Dated:	25th January 2022