

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20221252
Location	Land At Meadow Cottage School Lane Higham
Proposal:	Application for a Lawful Development Certificate to request confirmation that the approved dwellings are not required to be built by self-builders
Applicant:	Mr & Mrs Graham Loft
Site Visit	N/A Desktop Assessment

Plans & Documents

Application form
Cover letter
Drawing no. 18_95_01 rev C (site and location plan as existing)

Property Type

The property comprises an area of land to the south-west of Meadow Cottage that was granted permission at appeal for three dwellings to be built by self-builders.

Material Consideration

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

Relevant Planning History

20191222	Outline Application with Some Matters Reserved for the erection of 3no. self build houses with associated garages and landscaping.	Refused, allowed at appeal	21.01.2020
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Officer Assessment

The application site is a plot of land located in the Green Belt. Permission was refused for three dwellings on the plot however this was overturned at appeal. The appeal decision and planning application both described the development as the 'erection of 3no. self-build houses with associated garages and landscaping'.

In relation to self-build development, the Officer's report stated:

The Council has no adopted policy for self-build however the Gravesham Local Plan Regulation 18 Stage 1 Consultation Part 2: Development Management Policies Document (April 2018) did previously propose a policy (DM25 Self/Custom-Build Housing). The pre-amble to this policy clearly stated that 'To date, opportunities for self-build and custom-build dwellings in Gravesham have been focused on small infill development in the urban area and rural settlements inset from the Green Belt. We will continue to support this type of development.'. The application site is outside of the rural settlement and therefore this policy would not be applicable if it were adopted.

In his appeal the Inspector did not list the subject of self-build as one of the 'main issues'. In the body of the report he only mentions self-build to say:

30. The Self Build and Custom Housebuilding Act 2015 came into place on 1 April 2016 and puts a duty on Councils to keep a register of individuals and organisations who want to acquire land for self-build homes, and to have regard to this register in carrying out its planning, housing, land disposal and regeneration functions. The appellant has put forward unchallenged figures from the register that demonstrate a clear need for such housing to be provided.

31. The Council acknowledges that it has no current policy for delivering self-build housing and an emerging policy is not imminent. In such circumstances, there are clear benefits derived from the proposal to meeting housing needs. In addition, the appeal site is in an accessible location close to public transport opportunities and local village facilities, thus contributing economically and socially to a prosperous rural community.

No conditions were imposed on the decision notice to specify that the dwelling shall be self-built.

Case Law – Absence of an express condition

In *I'm Your Man Ltd v SoS* 1998 it was held that the description of the development permitted by a planning permission is insufficient to control its nature unless conditions are also imposed.

An example of a case where the judgment in *I'm Your Man Ltd* was applied is *North Tyneside* 29/09/2005 (appendix 1). Here, permission had been granted in 1996 for the use of the site as a waste transfer station (WTS) and recycling station for inert waste together with a top soil storage area. A condition had been imposed restricting the storage of materials within the site to top soil only. However, no conditions had been imposed limiting the type of waste that could be recycled. In 1997 permission was granted for an extension to the WTS building and again no condition limiting the type of waste processed within the extension was imposed. In March 2003 permission was granted for a further extension to the WTS building and a condition was imposed limiting the processing to inert waste only. The appellants sought to get this condition removed because it was unreasonable and unnecessary. An inspector concluded that since there were no limitations on the type of waste processed in the main part of the waste transfer building, there was little justification in trying to limit it within the extension granted in 2003. Although the council claimed that the type of waste processed was limited by the description of the proposed development the inspector disagreed, relying on the judgment in *I'm Your Man Ltd*. Since the council had failed to do this in 1996 and 1997, the use of the site for the processing and recycling of any materials was permitted provided the use continued to operate within the general industrial use class. The condition imposed in 2003 was unnecessary and unreasonable.

Another example is *Fenland* 10/12/2003 (appendix 2) where a council's failure to impose a condition restricting the use of an airfield to one light aircraft only for parachute jumping led an inspector to grant a LDC for its use by two aircraft. The council granted permission in 1997 for the use of the site as an airfield and a parachute drop zone using one light aircraft. It claimed that it was unnecessary to limit the terms of the permission by imposing a restriction on the number of aircraft because this was included within the description of development. However, noting the judgment in *I'm Your Man Ltd*, an inspector disagreed. The use of a second aircraft would not breach the terms of the permission. Neither would it lead to intensification in the use that would trigger a material change in the character of the land.

In Cotswold Grange Country Park LLP v SoS 2014, the High Court held that an inspector had erred in law when he upheld an authority's refusal to allow a landowner to station an additional six caravans for residential use on its holiday caravan site, see Tewkesbury 09/07/2013 (appendix 3). He had wrongly applied the principle in I'm Your Man Ltd by failing to appreciate that the site's existing planning permission did not contain a condition restricting the number of caravans. If a planning authority wishes to limit the number of caravans or the nature of their use it must do so by a condition that expressly says this.

The case law above shows that the permission does not rely on just the description of development but, if there is a specific limitation to the permission needed, this should be imposed by condition. No condition was imposed on the permission to ensure that the development was to be undertaken by 'self-builders' and therefore the proposal to build out the scheme by a developer is lawful and a certificate can be granted.

Recommendation: <u>Grant</u> Lawful Development Certificate
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Case Officer:	Mrs Alison Webster	Team Leader:	Richard Hart
Signed:		Signed:	
Dated:	7th December 2022	Dated:	7th December 2022