Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/1332
Kingstone (previously known as Plot 10 Dukes Hill), Bramble Lane, West Sussex, Thakeham, RH20 3DZ ("the Application Site")

DESCRIPTION:

Application to confirm the construction and occupation of a Class C3 residential dwellinghouse, outbuildings and associated amenity space (Lawful Development Certificate - Existing) ("the Application")

RELEVANT PLANNING HISTORY:
None relevant.

SITE LOCATION & APPLICATION DESCRIPTION

The Application Site comprises an agricultural small-holding and residential building located outside the built-up area boundary. The application building is located towards the north-east corner of the plot ("the Building"). There is a small, detached shed located adjacent to the south-west corner of the building. There is a single parking space adjacent to the gated entrance to the site on site, accessed via a double width vehicular access. The Application Site is not within a conservation area. There is an Article 4 Direction covering the Application Site and wider area (ART4055), which restricts development set out in the first schedule; the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, should not be carried out on the land, unless permission is granted on an application.

The Application Site is one of a number of plots of land that formed a large agricultural parcel of land known as Dukes Hill, Bramble Lane, West Sussex, Thakeham RH20 3DZ ("Dukes Hill"). The Council understands that over the years, Dukes Hill has been subdivided and plots have been sold to different owners. The Application Site was previously known as Plot 10 Dukes Hill, but the Applicant refers to the Application Site as Kingstone.

PLANNING ASSESSMENT

The application seeks a Certificate of Lawful Development ("CLEUD") to confirm the construction and occupation of a Class C3 residential dwellinghouse, outbuildings and associated amenity space, on a date four years previous to the date of the application.

1. *Planning Statement*

   Started work on constructing the dwelling in 2014. Applicant, Mr C King, moved into the Application Site, Kingstone on 15 February 2015. Obtained energy from Mitsubishi L200 generator with an inverter, upgraded to solar panels in 2017. Mains electricity installed and connected on 2 March 2020. Domestic water supply connected on 2 December 2018.

2. *Block Plan*

3. *Location and Block Plan*
4. *Site Photos – Applicant Provided*
    - The application building under construction in 2014.
    - 6 weeks after moving in, 6 April 2015.
    - Interior of the building, 8 Jan 2018
    - Christmas 2019
5. Utilities
    - *Invoices from Gas company*

    04/07/2020
    07/04/2021
    14/10/2021
    19/01/2022
    13/12/2022
    20/03/2024

    - *Electricity invoice*

02/092021 – 30/09/2021

- *UK Power Network Plan*
- *Water Connection Details*

6. *Statutory Declaration from W. Sudan.*

    Visited Applicant and property in 2017. The Applicant has lived there ever since. Visited the property multiple times over the years.

7. *Statutory Declaration from L. Wilshire.*

    Visited plots of land in 2014. Visited the house on 9th June 2015, house had beds and log burner. The Applicant has lived there ever since.

8. *Statutory Declaration from J. Hollerin.*

    Applicant purchased plots around 2012/13. Applicant has been living at the plot since February 2015.

9. *Statutory Declaration from J. King.*

    Applicant bought the land in November 2013. October 2014 works started on building the house. February 2015 the applicant moved in. Applicant has lived at the site for 9 years.

10. *Statutory Declaration from H. Prior.*

    Visited Applicant in 2017. Known Applicant living at Kingstone since 2016.

11. *Statutory Declaration from R.de Rouen.*

    Visited Applicant at site in June 2015, has lived there ever since.

12. *Statutory Declaration from C. O'Halloran.*

    Applicant occupied the building since May 2017.

13. *Statutory Declaration from C. King.*

    Main building was constructed and completed in February 2015. The utility room was constructed in early 2019. Purchased site for an allotment patch, to plant small orchard and keep bees and livestock. October 2014, work started on building. Moved into Kingstone on 15

February 2015 and have lived there since. Remains sole residence for the applicant. Used Mitsubishi L200 generator with inverter for electricity until 2017. Mains electricity installed and connected on 2 March 2021. Early 2019, built a second small ancillary building with separate shower. Connected to mains water on 2 December 2018. Lived at the site since 15 February 2015, for 9 years and 5 months.

Council's evidence:

1. *Site Visit on 23.10.2024*

   Site photographs

2. *Google Aerial Imagery*

   The building was in place in 2015.

3. *HDC Compliance*
   - Enforcement cases on site. (See below)
   - Email from the applicant on 03 October 2019 (see below) – been using the land for several years for agricultural purposes. Temporary construction on the land for machinery required to tend the land. Cabins house machinery to avoid rusting.
   - Site Photos from visits between 2014-2023 (see below)
   - Letter to applicant to address in Worthing (2021)

4. *HDC Council Tax*

   No record of this building on Council Tax records. Response received 17.10.2024.

5. *HDC Elections*

   There is no record of this building on the electoral register. Response received 11.10.2024.

Summary of Relevant Enforcement Investigations and Visits

EN/14/0511 Mobile home, caravan, and permanent vehicles on agricultural land

27.12.14 Letter received from Mr C. King regarding no mobile caravans on the Application Site, the Council made a mistake.

31.03.14 *Site Visit*: site prior to erection of timber cabin.

20.11.14 *Site Visit*: As above.

25.09.15 Land Registry confirmed address for Mr C. King in Worthing.

EN/19/0129 Breach of Article 4 Direction

09.05.19 *Site Visit*: minimal activity on land, timber cabin in situ and van parked outside.

16.09.19 *Site Visit*: minimal activity on land, timber cabin in situ

26.09.19 *Site Visit*: as above.

26.09.19 Open letter to plot holders served on the land by Compliance Officer re: Erection of unauthorised structures/buildings and storage of caravans/vehicles at: Land east of Dukes Hill, Bramble Lane, Thakeham, West Sussex

03.10.19 Email reply from Mr C. King stating using land for agriculture (i.e. evidence of concealment).

10.11.21 *Site Visit*: sheep grazing on land, safety barriers erected whilst installing electrical armoured cable.

15.03.23 *Site Visit*: minimal land activity, sheep on land

DC/24/1332 Submission of the CLEUD application 02.09.24.

23.10.24 *Site Visit*: Compliance Officer and Case Officer met Agent and Applicant on site.

Discussion:

Lawful Development Certificates, Concealment and Planning Enforcement Orders

S.191(2) provides that, for the purposes of the 1990 Act, uses and operations are lawful at any time if–

> "(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
> (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force"

If, on an application under s.191, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application: s.191(4).

The CLEUD procedure is not concerned with the planning merits of the use or development: see for e.g. **Sage v SSHLGC** [2021] EWHC 2885 (Admin), per Sir Duncan Ouseley at [19].

In a s.191 CLEUD application, the onus is clearly on the applicant to satisfy the local planning authority of the case for the CLEUD. On an appeal, the Secretary of State has to decide whether the refusal is well-founded, and if satisfied that it is not well-founded, he grants the certificate. The certificate is granted or refused, in the terms in which it is applied for, so the language of the certificate applied for is crucial, subject to the decision-maker's power of modification. This exists for an entirely different reason than enabling the applicant to submit wholly inadequate applications, leaving the decision-maker to sort it all out: see **Sage**, [21].

Where an application is made to a local planning authority for a certificate under s.191 and is refused, the applicant may appeal to the Secretary of State under s.195.

The content and degree of particularisation in a certificate is a matter of judgment, based on the evidence: see **R (KP JR Management Co Ltd) v Richmond-upon-Thames LBC** [2018] EWHC 84 (Admin).

Under the heading, 'How is an application for a lawful development certificate determined', National Planning Practice Guidance states that "*A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment*

before issuing the certificate": see PPG, Lawful Development Certificates, para. 009, Ref. ID. 17c-009-20140306, Rev. Date 06 03 2014.

Generally, the time limit for taking enforcement action is set out in s.171B of the 1990 Act, taken together with The Planning Act 2008 (Commencement No. 8) and Levelling-Up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

Where a person has deliberately concealed a breach of planning control, the courts have found that in these circumstances, the time limits in section 171B do not engage until the breach has been discovered: see **Welwyn Hatfield B.C. v SSCLG** [2011] 2 A.C. 304.

In the **Welwyn** case, Mr and Mrs Beesley had obtained planning permission for an agricultural barn as cover for their actual intentions. They constructed a building which externally looked like the permitted barn, but which from the outset was internally constructed and fitted out as a dwelling-house. They sought to rely on the four-year rule. In the Supreme Court, the Council successfully argued that the general time limits pursuant to s.171B of the 1990 Act did not apply in cases of deception. Mr Beesley could not rely on time limits on public policy grounds where his conduct consisted of positive deception in matters integral to the planning process and was directly intended to and did undermine the process. In that case, per Lord Mance at [43], "[t]he real gravamen of the council's case is to be found in the deception involved in the obtaining of false planning permissions… This was deception in the planning process and directly intended to undermine its regular operation".

Lord Mance JSC went on to say at [56]:

> "56. Here, Mr Beesley's conduct, although not identifiably criminal, consisted of positive deception in matters integral to the planning process (applying for and obtaining planning permission) and was directly intended to and did undermine the regular operation of that process. Mr Beesley would be profiting directly from this deception if the passing of the normal four-year period for enforcement which he brought about by the deception were to entitle him to resist enforcement. The apparently unqualified statutory language cannot in my opinion contemplate or extend to such a case."

Although it was emphasised in Welwyn and later cases that the Welwyn principle should only be applied in extreme cases (because the statutory immunity periods must have been conceived in part as sufficient for an LPA to normally discover an unlawful operation or use), the **Welwyn** principle is not confined to situations in which the four matters identified by Lord Mance in [56] are made out. Those are a sufficient set of factors for the principle to apply, but not necessary tests. Nor is there an "exceptionality" test or an "egregious" test to be applied when determining whether there has been deliberate concealment: see **R (Matilda Holdings Ltd) v SSCLG** [2016] EWHC 2725 (Admin), at [19].

Distinctly, where there has been deliberate concealment of a breach of planning control, local planning authorities may apply for a planning enforcement order, which allows them to take action after the time limits in s.171B have expired: see s.171BA-s.171BC.

Section 191(3A)(a) was inserted by the Localism Act 2011, s.124(3), subject to transitional, transitory and saving provisions, with effect from 06 April 2012: see SI 20112/628, art.8; for transitional, transitory and saving provisions see arts. 9, 12, 13, 16, and 18-20.

In essence, section 191(3A)(a) disapplies the time limits in s.171B where "*the time for applying for* [a PEO] *in relation to the matter has not expired*". That provision refers to the six months' time limit in s.171BB(1).

In the first instance decision in **Jackson**, Holgate J considered how councils cannot rely upon s.171BB(1) or (2), and cannot refuse CLEUD applications by relying upon s.191(3A): **Jackson v SSCLG** [2015] EWHC 20 (Admin), per Holgate J, at [63]; and see more generally at [60]-[65]. He went on to describe how:

> 64. Past experience shows that the situation I have described is likely to arise from time to time. The upshot is that in order to deal with unscrupulous landowners who use a strategy of deliberate concealment together with the CLEUD procedure so as to prevent enforcement action being taken, it is necessary to construe the PEO code as a supplementary procedure available to local authorities and not as an exhaustive replacement for the Welwyn principle. If not, ironically the effect would be to allow wrongdoers to continue to use concealment in order to legitimise breaches of planning control. In any balance struck between the advantages and disadvantages of the competing arguments, this consideration has to be decisive, quite apart from the other matters to which I have already referred.

A local planning authority cannot rely upon s.191(3A)(a) before that time limit starts to run. That would be incompatible with the proper operation of the standard time limits in s.171B: **Jackson**, per Holgate, [62].

Section 191(4) of the Town and Country Planning Act 1990 state that:

> "*If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application…they shall issue a certificate to that effect; and in any other case they shall refuse the application*."

The Court held in **F W Gabbitas 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".

Definition of dwellinghouse

There is no definition of “dwellinghouse” within the Town and Country Planning Act 1990 (TCPA) but reference is made within other relevant planning legislation.

Part C of the Use Classes Order 1987, as amended, defines Class C3 as “dwellinghouses” and refers to *“use as a dwellinghouse (whether or not as a sole or main residence) by –*

1. *a. (a) a single person or by people to be regarded as forming a single household;*
2. *b. (b) not more than six residents living together as a single household where no care is provided for residents; or*
3. *c. (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).”*

In **Gravesham BC v SSE and O’Brien** [1983] JPL 306, it was accepted that the primary characteristic of a dwellinghouse is its ability to provide the facilities required for day-to-day existence. **Grendon v FSS and Cotswold DC** [2006] EWHC 1711 (Admin) considered it necessary to determine whether the building is physically capable of being a dwellinghouse, has the attributes of a dwelling and is used as

such. Specifically, it is outlined that “as the cases under this Act and its predecessors have emphasised the question is to have regard, to an appropriate degree in each case, to both the physical state of the premises and their user, actual, intended and/or attempted.” This is supported in **R (oao Gore) v SSLG and Dartmoor NPA** [2008] EWHC 3278 (Admin) where it was concluded that “it is a matter of fact and degree whether or not any particular use of a building (for example, for occasional overnight sleeping) does or does not amount to a residential use of that building.”

From the above cases, it is clear that the building can be defined as a residential dwelling if because it affords all of the facilities necessary to live independently for day-to-day living. It is common practice that such facilities include bedroom, kitchen, bathroom, and living space.

From the evidence available and Case Officer site visit, the site benefits from a sleeping area, kitchenette, bathroom and living room. These facilities enable the accommodation to be occupied independently residentially, and while resulting in a small residential unit, would be sufficient to meet the definition of a dwellinghouse.

Use as a Dwellinghouse

The application contends that the evidence submitted demonstrates that the dwellinghouse was constructed and occupied as Class C3 use in excess of 4 years prior to the date of the application.

The Applicant, Mr C King, submitted a Planning Statement in September 2024 which outlines that works started on the construction of the dwelling in 2014. The evidence to support this, includes statutory declarations from a number of neighbours and family members and photographs provided of the building under construction, dated 2014. Photographs from 2014, 2015, 2018 and 2019 have been provided, showing the building under construction, and occupied by the Applicant. Invoices from the gas company date from July 2020 to March 2024, and an electricity invoice is provided from 2021 for its connection. The mains electricity connected was also in 2018. Based on the information provided, it is likely to assume that residential occupation of the building has been since 2020.

Statutory declarations from L. Wilshire and J. King corroborate that the dwelling was constructed in 2014 and has been occupied by Mr C. King since 2015, which is over a period of 9 years and 6 months. The Council’s aerial photography, in addition to Google Earth imagery, also illustrate that the building in situ since c.2015.

As shown above, there have been a number of enforcement cases on the site related to a number of different enforcement issues. These include the situating of mobile homes, caravans, unauthorised engineering operations and breach of the Article 4 directive. During all the enforcement cases, site visits were undertaken and investigations in the area surrounding the site (Dukes Hill), did not reveal evidence of residential living at the Application Site. Email correspondence with Compliance Officers and the applicant during the time period, indicated that the land use remained within agricultural use.

Investigations and Enforcement Cases

EN/14/0511: Mobile home, caravan and permanent vehicles on agricultural land. Land at Plot 10 Dukes Copse Community Coolham Road Thakeham;

27.12.14 - Letter from the Applicant (Mr C King) to the Compliance Officer explaining that the Compliance Officer had made a mistake with respect to Plot 10, Dukes Copse Community (the Application Site) i.e. there was no mobile home/caravan on his land and that the Council should look elsewhere.

It can be deduced from this file that the outcome of the investigation at this time was there was no breach of planning control on the Application Site and it was in agricultural use at the time of the investigation.

EN/14/0558: Developments on small plots at Dukes Hill in contravention of the Article 4 Direction

Site visits carried out on 31.03.14 & 20.11.14 show that the portable toilet and shower cubicle referred to in the CLEUD application were originally stationed in the north-west corner of the plot, and this was prior to the erection of the timber building. The photographs show the Application Site was in agricultural use at that stage.

EN/19/0129: Use of land in breach of an Article 4 Direction

Photographs of the site taken during 2019 conducted in connection with the above investigation do not reveal any obvious signs of residential use/activity of the Application Site.

26.09.19 - Open letter to all plot holders at Dukes Hill (including Mr C King as owner of the Application Site) served on the land by Compliance Officer requesting a site visit in connection with the above investigation.

03.10.19 - Email reply from Mr C King stating that he was using the land comprising the Application Site for agriculture and the same applies to the building (see below).

07.10.19 – Email reply from the Compliance Officer thanking Mr C King for clarifying his plot (the Application Site) was being used for agriculture.

EN/21/0180: Unauthorised engineering operations involving the excavation of the land and the consolidation of imported material to form a hard-surfaced access track and earth bunds: Land at Bramblefield/Dukes Paddock, Dukes Hill, Thakeham

07.04.20: Letter out to Mr C King at his home address, 16 Rife Way, Ferring in connection with the above investigation.

28.04.21: Email reply from Mr C King advising that he had undertaken no excavation works nor had he erected the 5 bar gate across the agricultural access track etc. The email chain included the earlier email of 3 October 2019 that he was using the land and building for agriculture.

In conclusion, the Council retains evidence of an email from October 2019, from the applicant himself, which states that the land is used, and building was being used for agricultural purposes.

That email was sent at 18.07 on 03 October 2019, in the following terms:

> *Dear Sirs, REF: EN/19/0129*
>
> *Thank you for your letter dated 26th September 2019. Unfortunately I did not retrieve the letter until 1st October 2019. I have been using the land for several years for agricultural purposes. I have chickens on there at this time along with a small apple orchard and vegtables that I grow for my own consumption. I do have temporary construction on the land that consist of wooden sheds/cabins to house feed and machinery that is required to tend to the land. The cabins house the machinery to avoid rusting and theft.*

I have had a council visit from yourselves approx 5 years ago when a neighbouring land owner had a visit and he stated I was completely compliant with the use of the area as agriculture. Therefore, I would like to enquire why I have received this letter and what has prompted it's issue.

Yours faithfully Mr King

The Council's principal planning compliance officer responded at 09:35 on 07 October 2019:

Dear Mr King,

Thank you for your email, the content of which is noted.

The Council has been asked to undertake a review of the planning issues at Dukes Hill plots following a general enquiry by the Parish Council to review the lawfulness of the structures and use of land at Dukes Hill, Thakeham, given there has been some changes to the appearance of the landscape over the last few years. Therefore, my site visit last week was routine merely as a fact finding exercise at this stage.

Thank you for clarifying your use of the land for agriculture and construction of wooden sheds to house feed and machinery. On this basis, there will be no need to contact you further on this matter, other than to state that if you intend to erect structures that will be permanently stationed on the land, they may require planning permission by reason on their size, degree of permanence and physical attachment to the land i.e. being operational development and you should contact the Council for a determination on such a matter.

I trust this clarifies the situation for you.

Kind regards,

[Principal planning Compliance Officer]

The 2019 email states that the building and the wider Application Site was in use for agricultural purposes.

This would appear to be diametrically opposed to, and inconsistent with, the version of events presented in the various evidence advanced in support of the present CLEUD application.

It is considered that one of the following two propositions must be true:

- first, the Applicant Mr C. King deliberately concealed the nature of the development on the Application Site, and the actual use of the Application Site, in prior correspondence with the Council's compliance team investigation enforcement matters (in particular, via correspondence on 03 October 2019); or

- second, the various assertions contained in the material supporting the application as to the nature of the use of the Application Site prior to at least 2019 are inaccurate.

In the light of the sworn statutory declarations and other evidence now provided for the first time with the CLEUD application, and the Council's above investigations, it is considered that of those two

propositions, the first is more likely to be correct (i.e., the Applicant deliberately concealed the nature of operational development and the use of the Site).

An evaluation of the factual circumstances of the case supports a conclusion that, based on the evidence available to the Council at the time of this report, the deliberate and deceptive concealment of the development described in the present CLEUD application has been a continuous state of affairs across the period of February 2015 to the date of the Application. Therefore, it appears, from the evidence available, that since 2015, there has been a breach of planning control in the operational development and change of use of the land from agricultural to residential.

The breach of planning control in 2015

It appears that the breach of planning control in 2015 entailed:

1. Without planning permission, the material change of use of the building in the approximate position shown coloured brown on the attached plan to use as a single dwellinghouse;
2. Without planning permission, the material change of use of the Land in the approximate location shown outlined in red on the attached plan from agricultural to a mixed use of agricultural and residential by way of using the land as garden amenity land.

The shed on the Application Site, currently used for storage, is confirmed to have been in situ since at least 2019, when a Compliance Officer visited, and is visible on the Council's mapping system from 2018. Regarding the outbuilding, according to the statutory declaration from Mr C. King, this was erected from a site cabin, in early 2019, with this including a separate shower for ancillary use. This building was confirmed in situ in site photographs taken in May 2019, by a Compliance Officer, as well as Google aerial imagery.

Further internal enquiries were carried out upon receipt of the present CLEUD application because the contents of the evidence in support of that application raised concerns, for the first time, that the Applicant's previous correspondence with the Council had mischaracterised the use of the building and the Application Site.

Those enquiries have revealed that at no point from 15 February 2015 to the date of his CLEUD application did Mr C. King register for council tax or the electoral register at the building or the Application Site, as confirmed by enquiries to the Council's Revenue and Benefits team (on 17 October 2024) and the Council's Electoral Services team (on 11 October 2024).

In other words, there is no evidence that the Applicant has been paying council tax or registered on the electoral roll since purportedly living within the building, and indeed the relevant Council teams have confirmed that no such administrative steps in relation to the property appear to have been taken by the Applicant. These "omissions" are capable, on evaluation of the factual circumstances of a case, as amounting to (or contributing to a finding of) deliberate concealment: see **McCaffrey v Dartmoor National Park Authority** [2023] EWHC 600 (Admin), per Swift J at [12]-[13].

Relatedly, despite allegedly completing the building and permanently residing there since 15 February 2015, and despite describing himself as a builder, at no point did Mr C. King give notice under Building Regulations applicable to a dwelling-house. Rather, he deliberately refrained from doing so. There is no record of Mr C. King applying to Building Control for conversion of the building to a single dwelling. This would be controlled by Building Control, as it contains sleeping accommodation. As it stands, the building would not be considered to comply with Building Regulations.

The Council's enforcement records provide no indication that at any point during numerous enforcement visits did Mr C. King disclose that the Application Site was being used for residential purposes as described in the CLEUD application. Rather, the Council's previous visits to the Application Site showed minimal activity on the land, but a timber cabin (the building) in situ and visits in 2021 showed sheep grazing the land. A site visit was undertaken by a Compliance Officer in 2019, with photographs provided showing the building in situ, although no photographs were provided inside the building. The first evidence of residential use at the Application Site was on receipt of the CLEUD.

It is immaterial that the letter email to the Compliance Officer of 03 October 2019 was sent outside of the relevant period, i.e., the four years prior to the CLEUD application. The same point stands in relation to the Applicant's omission to carry out administrative acts such as registering for council tax and the electoral roll (see below). It would appear that all of the circumstances point towards positive deception of the Council in carrying out its planning functions as to the actual use of the Application Site.

In combination, the Council considers that the Applicant has deliberately and deceptively concealed the nature of the development on the Application Site since February 2015.

The basis for this conclusion is principally the Applicant's failure to register the building on the electoral roll, or to pay council tax, for the period he alleges that he has lived at the building as a permanent resident, together with the email from October 2019 to the Council's Compliance Team by which he told the Council that the Application Site was being used for agricultural purposes, and the building was being used incidentally or ancillary to that use (rather than for different residential purposes).

For the duration of the period February 2015 until receipt of the present CLEUD application, despite numerous enforcement investigations in relation to the Application Site, the Council has been operating under the misapprehension that the Application Site has been used for agricultural purposes and not residential purposes as described in the description of development in the CLEUD application. This misapprehension has been principally informed by its dealings with the Applicant, most notably his correspondence in October 2019, and enforcement site visits which have not uncovered the state of affairs now described in the present CLEUD application.

It was only in September 2024 upon receipt of the present CLEUD application, and the evidence supplied in support of that application, that the Council had any reason to believe that the previous statement made by the Applicant to the Compliance Team in October 2019 was inaccurate and misleading. Likewise, it was only upon receipt of the present CLEUD application that the Council undertook checks with the Council Tax and Electoral Services Teams which confirmed that the Applicant had failed to register the Property for (or pay) Council Tax; or to register the Property on the electoral roll in October 2024.

Where a person has deliberately concealed a breach of planning control, the courts have found that in these circumstances, the time limits in section 171B do not engage until the breach has been discovered: see **Welwyn Hatfield B.C. v SSCLG** [2011] 2 A.C. 304.

It is considered that in the exceptional circumstances of this case, the Council is entitled to refuse the LDC on the basis of the **Welwyn** principle.

Moreover, the determination of the CLEUD application does not preclude a subsequent application pursuant to the statutory code for planning enforcement orders in ss.171BA-171BC: see **Jackson v SSCLG; Bonsall v SSCLG** [2015] EWCA Civ 1246.

In the present case, the Council considers that there is a connection between what Mr C. King has done to evade discovery and the statutory provisions. His actions – particularly his plainly misleading statement in response to the Compliance Team in October 2019 – have directly undermined the regular operation of the planning process.

In those circumstances, as a matter of public policy, Mr C. King would be profiting directly from this deception and deliberate concealment if the passing of the normal four-year period for enforcement which he brought about by the deception were to entitle him to resist enforcement.

Applying **Welwyn Hatfield**, the apparently unqualified statutory language cannot contemplate or extend to such a case.

Associated Amenity Space

In terms of residential use of the land as a leisure plot or garden land/amenity space, the land was in agricultural use when purchased in 2014. The Council's understanding is that the land was subdivided and sold as three separate agricultural plots – plots 10,11 & 12 although plot 11 formed part of the wider plot 10 at the start of the process.

Photographic evidence following on from an enforcement site visit in November 2021 provides evidence that there were sheep grazing within the curtilage on the land, which raises doubt as to whether the curtilage land in question was in actual fact being used for in residential purposes use at that time.

Conclusion

On the basis of the evidence available, it is considered on the balance of probability that:

(i) Operational development and the material change of use of the Site appears to have occurred by February 2015, and in particular, the use main building, for residential purposes was initially without planning permission, and the use of the Site for residential purposes been deceitfully and deliberately concealed by the Applicant.

(ii) Applying the **Welwyn Hatfield** principle, where a person has deliberately concealed a breach of planning control, the time limits in section 171B do not engage until the breach has been discovered.

(iii) The apparent breach of planning control, was only discovered upon receipt of the Applicant's CLEUD application (i.e., on 02 September 2024).

(iv) It follows that the contents of s.191(2) have not been satisfied, in circumstances where the normal four-year time limit does not apply (in particular, it is not the case that no enforcement action may be taken in respect of the uses and operations described in the application).

The above analysis and the below recommendation is expressly not based upon an application of s.191(3A) of the Town and Country Planning Act 1990.

Recommendation: Application Refused

Reason for REFUSING the certificate:

1. On an application of the Welwyn Hatfield principle (as set out in **Welwyn Hatfield B.C. v SSCLG** [2011] 2 A.C. 304), the Applicant appears to the Council to have positively deceived the Council in matters integral to the planning process (in particular, although not exhaustively, via misleading the Council in correspondence as to the nature of operational development and use of the Site, and by deliberately omitting to register for council tax and the electoral roll). In combination, these such acts were directly intended to and did undermine the regular operation of the planning process, and in essence concealed an apparent breach of planning control. The Applicant cannot therefore rely upon immunity periods prescribed in s.171B of the Town and Country Planning Act 1990 to claim immunity from enforcement due to the passage of time. Accordingly, the contents of s.191(2) of the Town and Country Planning Act 1990 have not been satisfied.

POSITIVE AND PROACTIVE STATEMENT

Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, in order to be able to, where possible, grant permission.

DELEGATED

Case Officer sign/initial	Bethan Tinning	Date:	20.01.2025
Authorising Officer sign/initial	RHERMITAGE	Date:	21.01.2025