



Memorandum

To: Head of Planning and Transportation
cc: Holli Fielden
From: Head of Legal, Estates and Member Services

Date: 28th March 2011
Ext: 3711
Ref: AG

Town and Country Planning Act 1990 – Application for a certificate of lawfulness for change of use of the land for runway strips in use for the taking off and landing of GA light aircraft and micro light aircraft. Change of Use of area shown cross hatched for the parking of GA light aircraft and micro light aircraft. Erection of hangers in position marked A for use for the storage and maintenance of GA light aircraft and micro light aircraft. Sitting caravan in position marked B for use of office and light refreshment room in association with the use of the site for the taking off and landing of aircraft
Ref: 10/00333/LDC

With reference to the above application I have now determined the matter and enclose a copy of my decision letter, certificate and plan.

This was placed in the post on 25th March 2011.

If you have any further questions please do not hesitate to contact me.


Head of Legal, Estates and Member Services

Enc.

Mr and Mrs Paul Ellingworth
Baldwins Farm
Little Wakering Road
Barling Magna
Essex
SS3 0LL

Ask for: Anne Gerzon
Ext: 3711
Tel: 01702 546366
Email: anne.gerzon@rochford.gov.uk

My Ref:
AG/PT/Planning/LDC/Baldwinsfarm
Your Ref:

Date: 25th March 2011

Dear Mr and Mrs Ellingworth

Application for a certificate of lawfulness for change of use of the land for runway strips in use for the taking off and landing of GA light aircraft and micro light aircraft. Change of Use of area shown cross hatched for the parking of GA light aircraft and micro light aircraft. Erection of hangers in position marked A for use for the storage and maintenance of GA light aircraft and micro light aircraft. Sitting caravan in position marked B for use of office and light refreshment room in association with the use of the site for the taking off and landing of aircraft
Ref: 10/00333/LDC

1. I refer to your application for a Certificate of Lawful Development for change of use of land shown hatched at Baldwins Farm, Little Wakering Road, Barling Magna, Essex, SS3 0LL. The site is shown edged red on the attached plan.
2. A Certificate of Lawful Development is sought in respect of change of use of the land for runway strips in use for the taking off and landing of GA light aircraft and micro light aircraft. Change of Use of area shown cross hatched for the parking of GA light aircraft and micro light aircraft. Erection of hangers in position marked A for use for the storage and maintenance of GA light aircraft and micro light aircraft. Sitting caravan in position marked B for use of office and light refreshment room in association with the use of the site for the taking off and landing of aircraft.
3. The original application form submitted gave the description of the existing use or

activity as "Existing use of aircraft taking off, landing on, manoeuvre on, for the purpose of the transport of passengers and/or flying instruction, aircraft to be fuelled and/or stored at the airfield, the use of three existing grass runway strips, hangers and standing for stored aircraft. Following correspondence with Judith Adams an Officer in the Council's Planning Department the description was amended to

"change of use of the land for runway strips in use for the taking off and landing of GA light aircraft and micro light aircraft. Change of Use of area shown cross hatched for the parking of GA light aircraft and micro light aircraft. Erection of hangers in position marked A for use for the storage and maintenance of GA light aircraft and micro light aircraft. Sitting caravan in position marked B for use of office and light refreshment room in association with the use of the site for the taking off and landing of aircraft."

This is the description that has been used for the basis of determining this application for a certificate of lawfulness.

4. This application is made under Section 191 of the Town and Country Planning Act 1990, which provides that if on an application under that Section the Local Planning Authority is provided with information satisfying it of the lawfulness at the time of the use described in the application, it shall issue a Certificate to that effect, and in any other case it shall refuse the application.
5. Under Section 191(2) of the Act, no enforcement action can be taken if the use or operation on the land did not constitute a development requiring planning permission, or constitute a contravention of an enforcement notice, or the time period for enforcement has expired.
6. In determining this application I have had consideration to the following documents submitted with this application.
 - A covering letter accompanying the application dated 17th September 2011.
 - A completed application form
 - An A5 size layout plan on A4 paper by messrs "Savills" showing runways and hanger areas hatched in black.
 - A small scale plan at scale of 1/2500 reduced from 1/1250 also showing runways hatched and hanger and parking areas cross hatched in black.
 - 3 A4 sized yellow card plans of the hangers.
 - 4 undated photographs showing the hangers with aircraft and microlights.
 - A document addressed to our Claire Robinson described as an airfield log.
 - An A4 sized plan of the layout of the site.
 - A bundle of statements that have been individually signed. The applicant states there to be 46 but only 40 appear to have been produced for the file. Included are letters from Philip Splett, Alan Green, John Pavelin, Cliff Passmore and Steve Sebastian.
 - Email from our Judith Adams dated 10th August 2010.
 - Letter from the applicant with no date to our Katie Rodgers

- 4 undated photographs of the hanger area.

I have also had regard to the records and documents available to the Council that relate to the above site, in particular the planning files.

7. The site from the 1950's to 1980's was in use for gravel extraction. Application CM/634/90 was a consultation to the District Council for sand and gravel extraction with restoration to agricultural use and construction of haul road to which the District Council objected. Application ROC/459/91 was for a retrospective application for an agricultural barn refused planning permission on 15th November 1981. The site is described in that application and the subsequent appeal against the enforcement notice as comprising 45 acres of land for hay. There are also references to the use of the land also for clay pigeon shooting and enforcement enquiries around that use. There is no further planning history since that time.
8. The site is set back from Kimberly and Little Wakering roads and is bounded to the east and south by the river inlet. To the north are former gravel workings and to the east is open grassed land.
9. The applicant claims that a change of use of the site from agricultural use to use as an airfield is lawful by virtue of the use occurring for a continuous period of 10 years. It is also submitted by the applicant that a hanger for housing light aircraft and microlights is lawful by virtue of being in existence for a period of 4 years or more.
10. I will first turn to look at the application for change of use of land shown hatched as runway strips for the taking off and landing of GA light aircraft and micro light aircraft. For the use of these airstrips to be lawful the use must have been proven on the balance of probabilities to have existed for a continuous period of 10 years on or before 20th September 2010.
11. The aerial photograph of September 1999 is before the statutory period being over one year earlier in date. It shows a shorter grassed airstrip east to west in direction. The strip is straight and appears closely mown whereas the rest of the site has more generous vegetation cover. It does not appear that the site is in use for take off and landing as shown in the plans and later photographs. The aerial photograph dated 16th July 2005 shows 3 runways. It shows a runway running from east to west, a runway positioned in the position of the runway titled taxiing runway on the applicant's submitted plan and a north to south runway.
12. A further aerial photo dated 11th August 2007 shows the east to west runway and taxiing runway. The taxiing runway does not appear visible on this photograph and appears to be no longer closely mown and in use. The 2009 aerial photograph still shows the two airstrips the north to south runway and the east to west runway. The taxiing runway does not appear to even be shown as faint markings and does not appear to be mown or in use at the time of the photograph. The aerial photograph from 2010 shows a similar layout to the applicant's submitted plan. The east to west

runway and north to south runway appear to be closely mown. However the taxiing runway appears to be overgrown or under some type construction. It appears to be distinct from the runway shown in the earlier aerial photograph taken in 2005 which shows a mown grass strip.

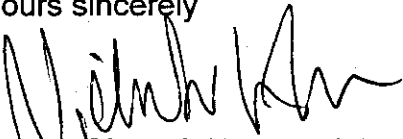
13. The statements submitted with the application do not mention the use of the individual runways only that the airfield has been in existence for a period of 10 years. The email from Steve Sebastian to Paul Farmer which is undated but appears to have been printed out on 15th August 2010 and mentions the flights he completed between January 2005 and 10th August 2010 which would put the date of the email in August 2010 states *"with two clear runways and clear thresholds"*. This seems to correlate with the aerial photographs of the north to south runway not shown as mown in the aerial photographs in 2007, 2009 and 2010.
14. The flight log from pilots based at Baldwins Farm details taking off and landings between 1985 and April 2009 which is evidence to show that the site was being used as an airfield at these times. However, it does not provide any detail of the runways used at the airfield. On the balance of probabilities the runways titled the east to west runway and north to south runway have existed continuously for a period of 10 years or more since 20th September 2010. I issue a certificate to this effect. The taxiing runway appears not to have been kept closely mown at the site in the period from the aerial photographs of 2007 – 2009 and may have been undergoing works in 2010. On the balance of probabilities it does not appear to have been used for a continuous period of 10 years since 20th September 2010 for the taking off and landing of GA light aircraft and microlight aircraft. I must therefore refuse this part of the application.
15. I now turn to consider the application for the erection of the hangers in the position marked A on the plan submitted with the application. In order to be lawful they would need to have existed for a period of 4 years from 20th September 2006.
16. The aerial photographs taken on 4th September 1999 and 16th July 2005 do not show a hanger present in the position marked A on the submitted plan. The aerial photograph dated 11th August 2007 shows a building with a white roof in the position outlined on the submitted plan. The photograph taken in 2009 also shows the building sited in the same area this shows the building marked A but it appears to have been extended. This correlates with the sitting caravan in the position marked B which the applicant submits is used as an office and light refreshment room. A further aerial photograph taken in 2010 shows the hanger marked A on the submitted plan. The sitting caravan does not appear to have been removed from the position marked B on the submitted plan on this photograph.
17. The applicant has also submitted some undated photographs to show the layout of the hangers. Little weight can be attached to these photographs as they do not show a date when the hangers were at the site. They also show little evidence as to the existence of the hangers over the four year period. In the bundle of statements submitted with the application the letter of Alan Green refers to keeping

his aeroplane an X-Air Falcon at the airfield but does not mention whereabouts on the site it was kept. The email from Steve Sebastian also refers to "*Southend hangerage costs being much higher than at Barling*" although little weight can be attached to this statement to show that a hanger was present on the site in the position outlined on the submitted plan for a four year period.

18. I therefore conclude that on the balance of probabilities the existence of the hanger marked A has not been proven at the site for a period of 4 years. Their existence has not been evidenced by way of written submissions and there appears to be no photographic evidence of the hangers existing prior to the aerial photograph of 11th August 2007.
19. I now turn to consider the siting of a sitting caravan in the position marked B on the submitted plan for the purposes of an office and light refreshment room. There is no reference to an office or refreshment room made in the statements accompanying the application. In addition, the aerial photograph taken in 2010 shows the hanger with a white roof being shorter in length than the hanger shown in the 2009 photograph. It seems as though the caravan was moved from this position in the period between the photographs being taken in 2009 and 2010. On the balance of probabilities the sitting caravan has not been at the site for a period of 10 years. I must therefore refuse this part of the application.
20. I now move to consider the application for the change of use of the area shown cross hatched on the submitted plan for the parking of GA light aircraft and micro light aircraft. This is for an area positioned south west of the north south runway. In order to be lawful the use will need to have existed on the balance of probabilities for a period of 10 years.
21. The aerial photograph dated 4th September 1999 does not show the parking area to be mown. However, the photograph taken on 16th July 2005 shows the area to be mown. There do not appear to be any small aircraft present on this part of the site at the time the photograph was taken. Further photographs taken on 11th August 2007, 2009 and 2010 show the area to be mown but do not show any aircraft parked in the area. The letter from Alan Green dated 25th June 2010 states that he keeps his plane (X-Air Falcon) at the airfield whilst this does mention that an aircraft is stored at the airfield it does not give specific detail as to the location where the aircraft is parked. The aircraft log which details flights made by pilots based at the airfield mentions pilots Passmore, Pavelin and Sebastian. This matches up with their letters which assert that they operate their own aircraft from the airfield. However they provide few details on the location of where their aircraft are parked. In addition no other evidence has been provided to show that the area has been used for the parking of aircraft for a period of 10 years from 20th September 2000.
22. On the balance of probabilities the area hatched on the submitted plan on the balance of probabilities has not been used for a period of 10 years for the parking of GA light aircraft and micro light aircraft. I must therefore refuse this part of the application.

23. The burden of proof in an application for a lawful development certificate is on the applicant. The Local Planning Authority must be satisfied on the balance of probabilities that the area hatched on the submitted plan for the parking of GA light aircraft and micro light aircraft has not been used for a continuous period of 10 years or more prior to the submission of the application. The evidence presented before me does not provide sufficient information or details to establish that part of the airfield have been used as for the parking of GA light aircraft and micro light aircraft for a period of ten years or more prior to this application. I must therefore refuse this part of the application.
24. Accordingly the applications that the erection of hangers in the position marked A on the submitted plan for the storage and maintenance of GA light aircraft and micro light aircraft, siting of a sitting caravan in the position marked B on the submitted plan for use as an office and light refreshment room, change of use of the area shown cross hatched on the submitted plan for the parking of GA light aircraft and micro light aircraft and change of use of the part of the land shown marked as the taxiing runway on the submitted plan is refused as you have not discharged the onus of proof and insufficient evidence has been presented to satisfy the Local Planning Authority that on the balance of probabilities the uses and operation are lawful. However, this does not necessarily mean that the application is unlawful and you are not precluded from submitting a further application if better evidence addressing the issues above is available.
25. Accordingly, I have determined that throughout the period from 20th September 2000 for a continuous period of 10 years the land shown hatched as runway strips on the submitted plan titled east to west runway and north to south runway has been in use for the taking off and landing of GA light aircraft and micro light aircraft. The Local Planning Authority are no longer able to take enforcement action in respect of that particular use of the land. This is subject to the conditions contained in the certificate. I therefore issue a certificate to that effect.
26. If you are aggrieved by this determination you have the right of appeal under Section 195 of the Town and Country Planning Act 1990 to the Secretary of State for the Environment.

Yours sincerely



Head of Legal, Estates & Member Services



ROCHFORD DISTRICT COUNCIL

10/00333/LDC

TOWN AND COUNTRY PLANNING ACT 1990: SECTIONS 191 and 192
(As amended by Section 10 of the Planning and Compensation Act 1991)

Town and Country Planning (General Development Procedure) Order 1995: Article 24


CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Rochford District Council hereby certify that on 21st September 2010 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reasons(s):-

(a) No enforcement action may be taken in respect of the development because the time for enforcement has expired.

(b) The use has existed, uninterrupted, as specified, for more than ten years before the date of the application.

Signed.....

 **Head of Legal, Estates and Member Services**
On behalf of Rochford District Council

Dated.....25/03/11.....

First Schedule

A change of use of the land hatched black from use as agricultural land to use as an airfield for the taking off and landing of GA light aircraft and micro light aircraft only.

Second Schedule

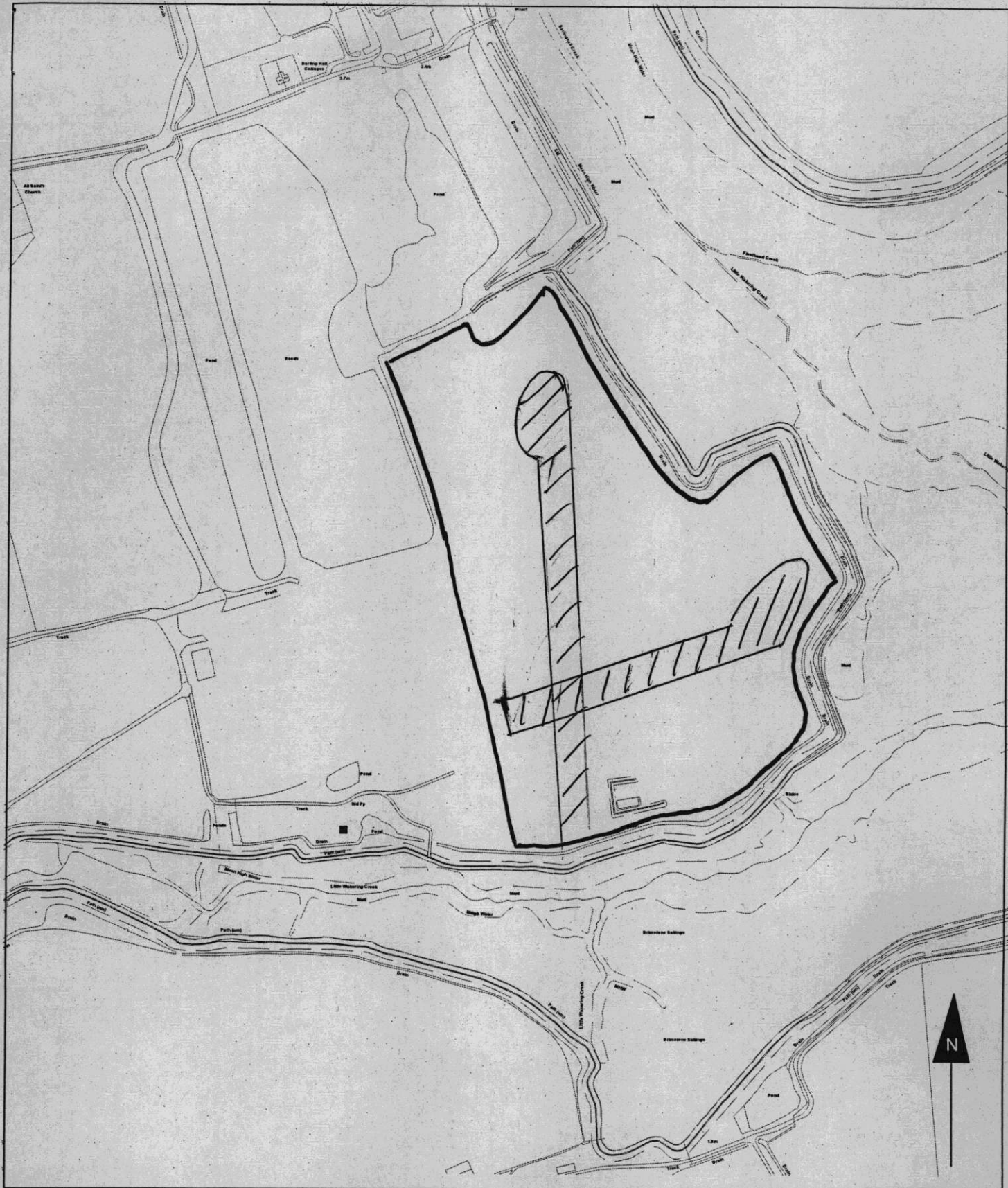
Land hatched black as runway strips on the attached plan at Baldwins Farm, Little Wakering Road, Barling Magna, Essex, SS3 0LL as shown edged red on the plan attached to this Certificate.

Notes

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful, on the specified 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.



Nicholas K.
(For Head of Legal, Estates and Member Services)

Scale 1:5000

Authority	Rochford District Council
Department	Legal Services
Date	

Department	Legal Services
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Date	
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Rochford
District Council