

Representations on an application for a Certificate of Lawfulness under section 191 of the Town and Country Planning Act 1990 ('the principal Act')

APP/19/00889 | Application for Lawful Development Certificate relating to the erection of log cabin and adjoining deck; erection of victorian [sic] style gazebo structure; and erection of marquee structure ('the application').

Tournerbury Woods, Tournerbury Lane, Hayling Island ('the application land')

The following representations on the application are made on behalf of A.G. Phillips & Son Limited ("AGP") of Tournerbury Farm, Tournerbury Lane, Hayling Island Hampshire PO11 9DL. AGP have owned Tournerbury Farm neighbouring Tournerbury Woods, Tournerbury Lane, Hayling Island ("the Application Land") during the entirety of the period specified in the application. Mr Grahame Phillips is a director of AGP and he has provided a letter and photographs that are highly relevant to the determination of this application.

AGP's knowledge of the site

1. The factual representations of AGP through this representation, as well as the photographs annexed to the undated letter of Mr Phillips are highly material and ought to carry significant weight with the local planning authority because AGP are:—
 - 1.1. the closest neighbours to the application land;
 - 1.2. have owned and farmed the neighbouring land to the application land throughout the period of the alleged activities;
 - 1.3. best placed to have knowledge of the extent, intensity, nature and timing of activities as they have developed over time; and
 - 1.4. in possession of information within their own direct knowledge together with objective information such as the photographs.
2. For these reasons AGP's representations as to factual matters and the legal implications of those factual matters ought to be given significant weight by the local planning authority. They are consistent with and supported in important respects by the applicant's prior statements and submissions to the local planning authority.

Legal Context & Requirements

3. The applicant has sought by application reference APP/19/00889 to obtain a certificate pursuant to sections 191(1)(b) and section (2) of the Town and Country Planning Act 1990.
4. The purpose of the application is to obtain a certificate to confirm that all of the operations set out in the application that have been carried out on the land are lawful.
5. It is the applicant for a certificate that bears the onus of proof of demonstrating lawfulness. The relevant test is on the balance of probability for factual matters, but the applicant's evidence must be sufficiently precise and unambiguous to be relied upon without corroboration. The issue of a certificate does not create rights but is simply a declaration binding on the authority.

6. Accordingly, in circumstances where the local planning authority must find there is an unauthorised material change of use on the application land in contravention of English and European law the authority would be fettering its discretion and acting unlawfully were they to now issue a certificate for the development described in the application. This is because in issuing certificates that would make it impossible to include steps in a planning enforcement notice issued to remedy an authorised material change of use that ensured the unauthorised operational development that was part and parcel of that breach of planning control could not be removed.
7. The application is not about the merits of any pre-existing or potential planning application for operational development or a material change of use in connection with the application land. It requires an analytical exercise establishing if there are grounds for granting or withholding a certificate of existing use or development.

Lawfulness

8. The operations are only lawful if no enforcement action may then be taken in respect of them because:—
 - 8.1. they did not involve development (s.191(2)(a));
 - 8.2. they did not require planning permission (s.191(2)(a));
 - 8.3. the time for enforcement action has expired(s.191(2)(a));
 - 8.4. for any other reason(s.191(2)(a));
 - 8.5. they do not constitute a contravention of any of the requirements of any enforcement notice then in force ((s.191(2)(b))
9. The time for taking enforcement action has not expired if, among other things:—
 - 9.1. the time limits in section 171B of the principal Act have not expired;
 - 9.2. the time for applying for an order under section 171BA(1) (“a planning enforcement order”) in relation to the matter has not expired.
10. AGP’s submission is that the relevant time limit for the buildings and structures described in the application is ten years rather than four years. Furthermore, even if that is not correct the log cabin structure was not substantially completed more than four years from the date of the application.

Time Limits

11. Section 171B of the principal Act provides that:—

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

12. In the case of the application land, AGP are of the firm view that presently planning enforcement action may be taken because immunity has not been achieved for activities on the land under section 171B(3) as a unauthorised material change of use, and there is operational development that is ancillary to that material change of use that is not capable of becoming immune under section 171B(1).

Enforcement Notice

13. Section 173 of the principal Act, provides among other things that a planning enforcement notice may require steps to:—

13.1. remedy the breach by making any development comply with the terms (including conditions and limits) of any planning permission which has been granted in respect of the land, by discontinuing the use of the land or by restoring the land to its condition before the breach took place; or

13.2. remedy any injury to amenity which has been caused by the breach.

14. The requirements of the notice may for example include among other things:—

14.1. The alteration or removal of any buildings or works;

14.2. The carrying out of any building or other operations;

14.3. Any activity not to be carried on except to the extent specified in the notice.

15. Section 172 of the principal Act provides:

(1) The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them –

that there has been a breach of planning control; and

that it is expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations.

16. It is the applicant’s submission that the unauthorised operational development and material change of use are plainly contrary to the development plan and there are also a number of material considerations including a breach of the Habitat Regulations. Failure to take action risks bringing the planning system into disrepute.

Planning Contravention Notice

17. The local planning authority must have regard to its own records including any planning contravention notices served in respect of the application land over the period relevant to the application, as well as to any office

notes. While AGP is not privy to these it would expect full reference to the evidence gathered by the local planning authority over the relevant period to be set out in its report to committee.

Identifying the correct breach of planning control

18. The legal test for the local planning authority to apply in deciding whether to grant a certificate is not solely to resolve the question of whether the operations referred to in the application have been substantially completed more than 4 years from the date of the making of this application. It is also necessary for the local planning authority to conclude that the time for enforcement action has expired (s.191(2)(a)).
19. The local planning authority can properly conclude, having regard to all of the facts and circumstances, that the breach of planning control consists not simply in respect of operational development but also of an unauthorised change of use. Thus operational development that might otherwise be immune from planning enforcement action is in fact capable of being the subject of a planning enforcement notice. As a matter of law that notice may require the taking of steps to remove that development because of its association with an unauthorised material change of use.
20. Where such a planning enforcement notice may be issued at the time of the making of the application for a certificate, then it is unlawful for the certificate to be issued because the local planning authority is unable to conclude as a matter of law that the time for enforcement action has expired(s.191(2)(a)).
21. AGP is entitled to expect the local planning authority to ensure it correctly identifies all extant breaches of planning control on the land and relates these to its determination of this application.

Relevance of a material change of use

22. The question of a material change of use of the land during the rolling period of ten years back from the date of this application is relevant because of the implications for the legal status of the operational development for which the applicant seeks a certificate.
23. Furthermore, if the operational development is integral to or forms part and parcel of the material change of use there is an appreciable danger of the grant of a certificate for operational development having effect so to permit an associated unauthorised material change of use of the land, or at the very least conceding the principle of that use.
24. The local planning authority has a firm basis on which to be able to conclude there is an extant unlawful and unauthorised material change of use and concluding there remains the scope for taking planning enforcement action.
25. It is AGP's submission that on the basis of the applicant's own planning application reference APP/18/00943 the local planning authority is compelled to conclude that what has happened on the land is not simply the carrying on of unauthorised operational development. It is instead a continuing breach of planning control by the material change of use of land without planning permission to a wedding and events venue with integral operational development to facilitate that use.
26. The applicant's planning application reference APP/18/00943 was validated on 6 November 2018. The application is an extant retrospective planning application to authorise:—

‘a material change of use of land and woodland as a wedding venue, including retention of permanent ancillary buildings and structures, the erection of temporary structures (including marquees and temporary facilities) and the use of land as a campsite in association with events, and use of the existing cottage for visitor accommodation.’

27. AGP is firmly of the view that the operational development for which the applicant seeks to obtain a certificate of lawfulness is encompassed and part and parcel of the currently unauthorised material change of use which the applicant has already sought and failed to regularise through retrospective planning application reference APP/18/00943.

Planning application reference APP/18/00943

28. AGP’s representations and conclusions are supported by the applicant’s own evidence submitted with the planning application reference APP/18/00943:

29. The applicant’s design and access statement entitled ‘Tournerbury Woods Estate Design and Access Statement August 2018’ (in this submission ‘DAS’) indicates that:—

29.1. the material change of use is not authorised: ‘The estate is currently designated as a woodland, agricultural and residential site. Planning permission is being sought to change the use of the estate to become a full time wedding and event venue.’ see page 1 of the DAS

29.2. the land and woodland activities require planning permission as it is admitted the only extant lawful use is ‘a woodland, agricultural and residential site’ page 1 of the DAS

29.3. events have always been facilitated and continue to be facilitated by, among other things, the following structures described on page 5 of the DAS:

‘Woods Cottage – 4 bedroom detached residence.

Marquee – 12m x 33m clear span marquee with 3m by 3m entrance pagoda. The eaves height is 2.4 meters from ground level. The marquee has two ‘pagoda tops’ which reach up to a height of 8.5m.

Victorian Wedding Gazebo – open air structure measuring 3m in diameter and 4.5m height, made of iron. This structure is licensed by Hampshire County Council for Civil Marriage Ceremonies.

The Deck of Love – raised deck area measuring 11.5m in width and 22m in length with 4m by 3m log cabin on it. Stretched tent awning across the whole deck provides roof cover and is 6.5 m from ground level at its highest point. This area is licensed by Hampshire County Council for Civil Marriage Ceremonies.’

30. It is the applicant’s firm submission that Marquee, Victorian Wedding Gazebo and The Deck of Love described in the DAS are also the structures named in the application as ‘log cabin and adjoining deck; erection of victorian [sic] style gazebo structure; and erection of marquee structure.’

Lawfulness

31. As it appears accepted by the applicant and the local planning authority that unquestionably:

31.1. there is an extant breach of planning control by the continuing use of the land and buildings for use of land and woodland as a wedding venue, including retention of permanent ancillary buildings and structures, the erection of temporary structures (including marquees and temporary facilities) and the use of land as a campsite in association with events, and use of the existing cottage for visitor accommodation;

31.2. the breach of planning control is a material change of use of land to which the time limit for immunity is ten years in accordance with section 171B(3) of the principal Act;

31.3. the breach of planning control has not continued for a rolling period of ten years;

31.4. the structures are ancillary development being accurately described as such in the applicant's own DAS as an integral part of and facilitate the unauthorised change of use;

31.5. that the development described in retrospective planning application reference APP/18/00943 and the development for which a certificate has been sought in this instance is unlawful because it does not comply with the Habitats Regulations.

32. In the circumstances the ancillary buildings and structures are *prima facie* unauthorised and unlawful and are in breach of planning control because the applicant cannot demonstrate a ten year period of continuous material change of use in a rolling period of ten years.

Identifying the date of the breach of planning control

33. The relevant test to identify whether there has been a material change of use of land or buildings is to deal with the question as to whether the present use (being carried on an unauthorised basis now) is materially different from that of ten years previously.

34. It is plain from the applicant's DAS that there has been a material change of use of the land and buildings in a manner which is materially different from that of ten years previously: see *North Devon DC v First Secretary of State* [2004] EWHC 578 (Admin).

35. The purpose of the ten-year period is:—

'give the local planning authority sufficient time to identify any significant planning problem arising as a result of the breach of planning control' (per Sullivan J. in *North Devon*).

36. It is axiomatic that the local planning authority as the competent authority for purpose of the Habitats Regulations ought to be able to conclude that planning enforcement action must be taken prior to the expiry of the rolling ten year period. Until the expiry of that period planning enforcement action may be taken and the requirements of section 191 of the principal Act are unsatisfied.

Works to create ancillary structure part and parcel of an unlawful use

37. It is plain that the works alleged undertaken in 2011, 2013 and 2015 were erected purely for the purpose of undertaking the unlawful change of use. They were part and parcel of the unauthorised material change of use and the description of their use by the applicant in these applications and elsewhere are incompatible with their erection compatibly with a lawful woodland, agricultural or residential use. In fairness to the applicant they have never suggested that the structures which are the subject to this application were erected for or were capable of being for the purpose of a lawful use of the application land.

Substantially completed

38. Section 171B(1) of the principal Act provides that:—

“Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operation in, on, over or under land, no enforcement action may be take after the end of the period of four years beginning with the date on which the operations were substantially completed.”

39. In the case of breaches of planning control solely referable to operational development, time runs from the date when the operations were substantially completed. It is highly relevant in respect of the consideration of this application, that if any part of the operations required to complete the development are still within the time limit then all the works including those carried out more than four years ago (if that is the appropriate time limit) can be enforced against: see *Robert Reginald Howes v Secretary of State for the Environment* [1984] JPL 439 ; *Ewen Developments. Ltd v Secretary of State for the Environment and North Norfolk District Council* [1980] JPL 404.

European Law

40. The Habitats Directive is transposed into domestic law by the Conservation of Habitats and Species Regulations 2010 (SI 2010 No 490) (“the Habitats Regulations”). Regulation 9(3) provides:

“... a competent authority, in exercising any of its functions, must have regard to the requirements of the [Habitats Directive] so far as they may be affected by the exercise of those functions.”

41. A local planning authority is a “competent authority” for these purposes. Although, under regulation 9(3), a decision-making planning authority's obligation is restricted to “having regard” to the requirements of the Habitats Directive so far as those requirements may be affected by its decision, that does require genuine engagement (see *R (Woolley) v Cheshire East Borough Council* [2009] EWHC 1227 (Admin) at [26]-[28] per His Honour Judge Waksman QC).
42. Accordingly, in so far as unauthorised material change of use or unauthorised operational development engages that Habitats Regulations then it is critical that in determining the application the local planning authority genuinely engages in the requirements of the of the regulations particularly in so far as:—

- 42.1. the factual and legal circumstances mean that a certificate of lawfulness must be withheld.
- 42.2. that the local planning authority must consider whether it is expedient to issue a planning enforcement notice in order to give effect to the requirements of legislative scheme
43. The Application land forms part of the Chichester and Langstone Harbours Special Protection Area, Chichester Harbour Area of Outstanding Natural Beauty and the Chichester Harbour SSSI. The local planning authority should consult Natural England on the implications of issuing any form of certificate as a result of this planning application.

Application threshold

44. Section 191(4) of the principal Act provides:—

‘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, 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.’

45. The fact of the matter is that there is no basis upon which the local planning authority is able to conclude sufficient information has been provided so that the local planning authority can be satisfied of lawfulness on the balance of probabilities. In fact, the task that the applicant ought to be required to be carried out is to explain the contradictory information about the activities on the land that has been provided in the earlier planning application. The local planning authority must require a properly large scaled plan for each building that enables the applicant to properly demonstrating the extant (if any) of any changes in the footprints of the buildings or structures over the periods described in the application. For example, one question is if there is evidence that the marquee has not changed location over time, even during the period that it is alleged it has not have been entirely dismantled.

Application Form requirements not complied with

46. The legislative scheme requires applications to be validated only if they comply with, among other things, article 39 of the Town and Country Planning (Development Management Procedure)(England) Order 2015.
47. In summary, this requires the applicant to complete the application form in full and for the local planning authority not to validate, or where validated in error, to treat the application as invalid in circumstances where the application requirement of article 39 have not been complied with. In addition, the local planning authority has a power to require further information as may be specified to enable them to deal with the application.
48. It is AGP’s submission that the application is invalid and incomplete because the applicant has failed to complete the application form. Question 10 of the application form is in three parts. The first asks when the use or activity begun, or the building works substantially completed.
49. The second part asks: ‘In the case of an existing use or activity in breach of conditions has there been any interruption?’

50. The third question is unanswered on the form. While it refers ‘in the case of an existing use of land’ the question remains relevant for the purposes of this application. This is because the structures or buildings for which the applicant seeks the certificate are only used in the manner described in the DAS. Consequently, the failure to provide that information results in the application being defective.
51. Accordingly, the local planning authority must seek further information to decide the lawfulness of the structures or buildings.
52. The applicant has not, but must now provide an answer to the question:—

In the case of an existing use of land, has there been any material change of use of the land since the start of the use for which a certificate is sought?

53. The local planning authority must satisfy itself as to that point or reject the application in its entirety. If the local planning authority determines the planning application without reaching a judgement on this point and without requesting this information then it will have failed to properly decide the application and will have made a serious error of law leaving itself open to judicial review.

Pre-application Advice

54. The applicant has indicated that pre-application advice was received by the applicant. By this letter, AGP makes a formal request for the disclosure of that pre-application advice. That will enable the wider public to determine if the relevance of a unauthorised material change of use within the last ten years together with a failure to comply with the requirements of the Habitats Regulation have formed part of the pre-application advice and to what extent the applicant has been requested to address and rectify these aspects of the use of the application land.

The substantive applications

55. The representations below are without prejudice to the points that the application form is incomplete, there is insufficient information to determine the application, and that it is defective and requires resubmission or a request for further information.

Erection of log cabin and adjoining deck as one extended operation not immune

56. The first point to make is that the log cabin is alleged to have been erected in the autumn of 2010. It is submitted that the relocation of the log cabin (even if it was 2010 which is not accepted) was not the point in time of the substantive completion of the development from which the potential period of immunity ought to be calculated. The entire development encompassing the red line on the application plan includes the log cabin and the deck and the entire building and structure ought to be considered as one development.
57. Substantive completion of the development was achieved no earlier than 2017. We attach photographic date stamped evidence of the completion of the development at that time. This is over seven years from the date alleged by the applicant of substantial completion.

58. On the basis that the entire structure was substantially completed in 2017 it is not operational development immune from planning enforcement action: see *Sage v Secretary of State for the Environment, Transport and the Regions and others* [2003] 2 All ER 689 [2003] UKHL 22. Accordingly, a certificate ought not to be granted.
59. Those parts of the log cabin and structure erected in the past form part of ancillary development to facilitate an unauthorised change of use. Accordingly, even if the first point is not accepted, it must be accepted on the applicant's own evidence, that on this second basis the development is not immune from enforcement and a certificate ought not to be granted.

Alleged Substantial completion of deck structure August 2011 is incorrect

60. Even if contrary to the holistic approach necessitated by the case of *Sage* to the question of completion, and the treatment by the application of both structures as one, the local planning authority were to treat the log cabin and deck structure as two separate developments then the decking itself was not completed until 2017. If there was decking there previously it has been removed and hence there was an interruption or a new and unrelated period of operational development.
61. On any sensible interpretation the decking and the associated structures are not immune from planning enforcement action as operational development. In any event as explained above the decking is undoubtedly associated with the unauthorised material change of use as building or structure ancillary and part and parcel of the unauthorised change of use.
62. The applicant ought to be asked by the local planning authority to comment and explain the photographs of 2017 supplied by AGP in the context of this aspect of the application.

Erection of the log cabin in 2011 facilitated an unauthorised material change of use

63. AGP concede the log cabin was erected in 2011, but the comments about the completion of the development for which a certificate is sought, and the erection of an ancillary structure to facilitate an unauthorised material change of use are of equal force in respect of the log cabin as they are for the decking.

Relevance of applicant's photographs: log cabin and decking 0018 to 0023

64. The photographs are not properly or accurately referable to a specific area of land. It has not been demonstrated by the applicant that the photographs show the structures on the same footprint as the structures are alleged to be sited at the date of the application. The photographs do not show continuity, they only demonstrate the erection of structures but do not prove on the balance of probabilities they are the same or unaltered structures from 2011 as alleged by the applicant.
65. The photographs are of insufficient evidential value to meet the legal test. For any sense to be made of the photographs they ought to be cross-reference to far larger scale plans of each individual land area. The plan supplied with the application is far too small scale to be of any probative value or assistance to the local planning authority in determining this application.

Erection of Victorian style gazebo structure

66. The alleged substantial completion of this structure is June 2015 and AGP do not have any information to refute this aspect of the application. However, the legal consequences that the gazebo is unauthorised are unchanged, since it is on the applicant's own admission an ancillary structure erected for the explicit purpose of enabling a breach of planning control by implementing an unauthorised material change of use of the land to among other things a wedding venue.
67. As explained above a planning enforcement notice may be served by the local planning authority setting out that there is a breach of planning control and that this structure must be removed in order to put the land in the position it was prior to the unauthorised material change of use. Given the liability, duties and legal responsibilities of the local planning authority to ensure public confidence in the planning system and as a competent authority under the Habitats Regulations the local planning authority must take into account there is an extant breach of planning control on the land.

Relevance of applicant's photographs: Victorian gazebo 0055

68. The photographs are evidence of an unauthorised material change of use except in so far as the events were within permitted development rights. The point made above about cross-referencing the photographs to a much larger scale plan is repeated.

Erection of marquee structure

69. The applicant alleges substantial completion of the marquee in July 2013. That date is inaccurate and ought to be rejected.
70. AGP's director Mr Phillips is clear that the marquee was erected and disassembled each winter. It is conceded that the marquee was last erected and then retained on a permanent basis no earlier than spring 2016.
71. On the basis the marquee structure was substantially completed no earlier than 2016 it is not immune operational development. Accordingly, a certificate ought not to be granted.
72. In addition to these works, the local planning authority ought properly to consider the relevance of the engineering works forming part of the marquee development in 2019 in order to provide soundproofing. It is clear that this means that the substantive completion of the marquee did not take place until 2019. Even if that is not correct the works to create foundations is an engineering operation and consequently does not benefit from the exclusionary provision in section 55(2)(a) of the principal Act.
73. In any event, the erection of the marquee in 2016 forms part of ancillary development to give effect to an unauthorised change of use. Accordingly, even if the point about the unlawfulness of the operational development in its own terms is not accepted, the local planning authority may only conclude on the applicant's own evidence and on the basis of the factual matrix that the development is not immune from enforcement and a certificate ought not to be granted.

Relevance of applicant's photographs: marquee and events 0028 to 0036

74. These photographs show one year only. They do not demonstrate a permanent erection of the marquee. The photographs are consistent with AGP's understanding that the marquee was dismantled each winter until 2016. The photographs are evidence of an unauthorised material change of use except in so far as the events were within permitted development rights.

Event photos 0037 to 0093 (save 0055)

75. Most of the photographs are redacted. In so far as they show events in 2013 to 2018 involving the marquee the points relating to 0018 to 0023 and 0032 to 0036 are repeated. They are *prima facie* compelling evidence of an unauthorised material change of use which on the applicant's own admission requires planning permission. The failure of the local planning authority to permit development contrary to its own development plan is extraordinary.

Photographs referred to in applicant's witness statement are missing from public access website

76. Photographs 0005 and 0006 are not available on the website and so ought to be provided for public scrutiny.

AGP statement and photographs

77. Please see attached the statement of Mr Grahame Phillips of AGP and the associated photographs which are highly material to the determination of the application. The 2017 photographs show the finalisation and erection of a log cabin with substantial deck structure. This goes to the point about the substantial completion of these items, and that the allegation that they were constructed as part and parcel of the unauthorised use. The other images are Google Earth computer screenshots dated April 2015. These images demonstrate the seasonal erection and re-erection of the marquee in 2015 and are evidence to that tends to demonstrate that it is not correct for the applicant to suggest completion of the marquee took place in 2013. The seasonal nature of the erection and re-erection is evidence tending to indicate that the marquee is ancillary to an unauthorised use.

Conclusion

78. The application ought to be considered collectively. Splitting the determination of this single application in respect of these structures would be inappropriate because their commonality is that they are ancillary to an extant unauthorised material change of use of the land and so must be considered as a whole.

79. In summary AGP's objections are:—

79.1. The application form is incomplete in a material respect and further information is required or the application must be refused;

79.2. The applicant and the local planning authority must grapple with the implications of the applicant's admitted unauthorised material change of use;

- 79.3. the applicant has admitted structures are ancillary to, part and parcel of and are entirely associated with the unauthorised material change of use—this is the purpose for which they were erected;
- 79.4. the unauthorised development is in a highly sensitive environmental location with policy protection at the highest possible level;
- 79.5. the ancillary log cabin and decking was not substantially completed until 2017
- 79.6. the marquee was not permanent as a feature on the landscape until 2016;
- 79.7. all the structures including the log cabin and decking are ancillary structures that are part and parcel of the unauthorised use and are not capable of being used in accordance with the authorised lawful use;
- 79.8. sections 171B(3) and 173 of the principal act together with the *Murfitt* and *Kestrel Hydro* line of authorities enable the local planning authority to take planning enforcement action against all the structures;
- 79.9. none of the operational development in the application is immune from planning enforcement action;
- 79.10. the certificate cannot be issued because the application does not meet the tests in section 191 of the principal Act.
80. The local planning authority is now in receipt of authoritative, credible and important evidence contradicting the applicant's recollection of operations on the application land. It would be wholly unsatisfactory, unwarranted and unlawful for the certificate to be granted in these circumstances. The application ought to be refused on the basis that the applicant has not met the evidential or legal threshold for the granting of a certificate for any of the structures or buildings identified in the application.
81. Mr Phillips of AGP is content to provide evidence by way of statutory declaration should that be necessary.

Matt Gilks

Thrings Solicitors

25 October 2019