



Appeal Decision

Site visit made on 10 May 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 October 2023

Appeal Ref: APP/L2250/X/20/3259875

Stuarts Lodge, South Lodge Road, Stelling Minnis, CT4 6BL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Dylan Hyson against the decision of Folkestone and Hythe District Council.
 - The application ref Y19/0402/FH, dated 12 April 2019, was refused by notice dated 29 April 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as *'retention and use of 'Building 2' as self-contained dwelling. The building has been in existence on the site and used as a self-contained dwelling for a period in excess of four years, as described in the statement by Dylan Oliver Hyson and the supporting letter. The building and the area surrounding it that has been used for the purpose is identified on the submitted location plan'*.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use and operation which are found to be lawful.

Preliminary Matters

2. An application under s191(1)(a) and (b) of the Town and Country Planning Act 1990 as amended (the 1990 Act) seeks to establish whether any existing use of buildings or other land, and any operations which have been carried out, are lawful.
3. The burden of proof lies with the appellant to make his case on the balance of probabilities. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated.
4. The appeal relates to a building known as Stuarts Lodge (also referred to by the Council as 'Building 2'), as well as an area of land around it and leading to it.
5. S191(2) of the 1990 Act explains that uses and operations are lawful if no enforcement action may be taken in respect of them, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. Under s191(4) the relevant date for ascertaining whether existing development is lawful is the date of the LDC application. The LDC

sought is the therefore unaffected by the enforcement notice directed at Stuarts Lodge, which was issued post refusal of the LDC application.

6. The Council state that the relevant period for a residential self-contained dwelling to become lawful is four years of continuous use. That is reflected in its reason for refusal. The appellant's LDC description also includes reference to the building's existence on the site and use as a self-contained dwelling for a period in excess of four years.
7. However, s171B(2) of the 1990 Act states that '*Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*'
8. The appellant states that Stuarts Lodge was constructed in the early 2000's or before by the person who subsequently lived in it. The inference of that is that the building was constructed as a dwellinghouse and that there has been no '*breach of planning control consisting in the change of use of any building to use as a single dwelling house*'.
9. I therefore offered the parties opportunity to comment as to whether the four year time limit of s171B(2) is applicable or whether the use of both the building and land falls to be assessed against the time limit of s171(B)(3), which is that '*no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.*'
10. Having reviewed its position, the Council confirmed that the 10 year time limit of s171(B)(3) is applicable to both the use of the building and the land. The appellant has not sought to argue otherwise and has referred to evidence which he considers supports his case on that basis.
11. Nevertheless, in terms of use, for a breach of planning control to have occurred, there must have been a material change, and it is only a material change of use which can become immune from enforcement action. Having regard to s171A(1) of the 1990 Act, use, in itself, is not an act of development. If the building was used as a dwelling from the time it was constructed, there would have been no material change to which the provisions of S171B(3) (or s171B(2)) could apply. However, there may have been a material change of use of the land on which the building was constructed.
12. Although the application form indicates that the LDC is sought for an existing use, the description given also refers to the retention of the building. Therefore, notwithstanding that retention is not an act of development, I have also considered whether Stuart Lodge as a building is immune from enforcement action under the four year time limit of s171B(1) of the 1990 Act.
13. I note the appellant's explanation as to why he came to live at Stuarts Lodge. I also note interest parties' concerns, including those relating to the ancient woodland, the Area of Outstanding Natural Beauty, Site of Special Scientific Interest and matters of precedent. However, planning merits and personal circumstances can form no part of the assessment of an application for a LDC, which must be considered in the light of the facts and the law. For the same reasons, concerns over an alleged circumvention of the planning process cannot form part of my assessment. Moreover, whilst I have also noted the

ownership concerns, any person may apply for a LDC, regardless of whether they have an interest in the land.

14. Ordinarily, I would look to avoid using the names of individuals who have submitted evidence but in this case it is unavoidable. There is some variety in the spelling of Stuart Brickell's name in the evidence, but it is more likely than not that reference is being made to the same person. I have used the spelling throughout as per the letters addressed to him, even where the source spells it differently. I have also used the spelling of Stuarts Lodge (without the possessive apostrophe) as set out in the application and appeal forms.

Main Issue

15. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on:

- whether the building was substantially completed on or before 12 April 2015¹, so as to meet the immunity period from enforcement action under s171B(1) of the 1990 Act; and
- whether the use of the land on which Stuarts Lodge has been constructed materially changed to residential use on or before 12 April 2009², and then continued without material interruption for a period of at least 10 years thereafter, so as to meet the immunity period from enforcement action under s171B(3) of the 1990 Act.

Reasons

Building

16. As noted, the appellant contends that Stuarts Lodge was in existence long before he moved into it, having been constructed by Stuart Brickell in the early 2000's, or before.
17. The appellant states in his statutory declaration (SD) that he moved to Stuarts Lodge on 7 February 2015 and that it has been his primary residence since. (I note the submissions made regarding the term '*primary residence*' but I do not agree that describing it as such necessarily infers that the appellant had another residence.) The appellant explains that there was a short period that he had to stay part-time overnight with his girlfriend (later clarified as during January 2015, before moving in) whilst carrying out repairs and when there were no washing facilities.
18. A sworn affidavit from Mr Kevin Gray, the owner of South Lodge Farm, located close to the site, states that having lived at that property since 2007 he got to know an elderly person named Stuart Brickell and that it became apparent he was living in a small dilapidated shed made of bits of pallets and scraps of wood measuring approximately 8 x 10 feet (2.4m x 3m).
19. A sworn statement from Diane Steventon, dated 19 August 2019 attests that she has lived at Fryarne Park Farm (located close to the site) since 1989. She says that for a number of years a small building resembling a garden shed was occupied by Stuart Brickell.

¹ This being the date four years prior to the LDC application

² This being the date 10 years prior to the LDC application.

20. The SD of Mr Martin Brown (dated 10 October 2019) explains that he purchased land in August 2008 and that the Land Registry plans showed a dwelling on the adjacent plot named Stuart Lodge. The SD exhibits several letters from the Council including that from 13 July 2010 in response to Mr Brown's complaints, which explains that following investigation of a possible unauthorised dwelling, the matter was found not to be in breach of planning control. The Council stated at that time the property had been in situ for considerably longer than the four years required to be immune from enforcement action and that no further action would be taken.
21. The Council now state the building on site is completely different to that described and that it seems likely that the repairs carried out by appellant amounted to the construction of a substantially new building, rather than simply repairing what was on the site before.
22. Whilst the onus lies with the appellant to make his case, there is very little evidence to that effect. Having regard to Mr Gray's description, the building shown in the Council's photographs from May 2020 is also rudimentary in its construction and appearance, with pallets and off-cuts of wood.
23. Moreover, the aerial photograph from 2007 appears to show a structure that is significantly greater than the dimensions estimated by Mr Gray and could very well be the appeal building. That appears to be consistent with the view of the Council's Enforcement Officer in his email of 19 February 2018 in which he states that aerial photographs appear to show the original building having been in existence for at least ten years. I also find it unlikely that Mr Brickell would have lived in a building as small as that estimated by Mr Gray.
24. An email from Lazio Dudas (dated 18 August 2019) includes two pictures of what are described as two separate dwellings. The annotation below the picture of a pitched roof building states that the last time he saw the 'shack' it was made from pallets with a flat tin roof, with living above. He believed that to be December 2013. However, that picture is likely of Building 1, which was, based on the evidence, a more recent building constructed by the appellant that does not form part of the appeal, and which has been removed.
25. Underneath the second picture, which appears to be the appeal building, it is again confirmed that when he last saw the 'shack' during December 2013, this new building was not in evidence or constructed. However, it appears to me that the pictures have likely been mixed up and that the description of the 'shack' Mr Dudas viewed in 2013 could easily apply to Stuarts Lodge.
26. Therefore, on the balance of probabilities, the repairs carried out by appellant did not amount to the construction of a substantially new building. Even if they did involve making material changes to the building which amounted to a breach of planning control, I have little evidence which contradicts the appellant's version of events that they were carried out by February 2015. Consequently, the building known as Stuarts Lodge is immune from enforcement action, pursuant to s171B(1) of the 1990 Act having been substantially completed four years before the date of the application, on the balance of probabilities.

Whether the building amounts to a dwelling

27. Mr Gray states that there was no sanitation, running water or electricity in the building and that the living conditions were appalling. The Council state that casts doubt on whether it could be said to have met the definition of a dwelling.
28. There is no definition of the term 'dwellinghouse' in the 1990 Act but it was accepted in *Gravesham*³ that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
29. The appellant states in his SD that the building contained all the facilities and amenities for living with a kitchen area with gas oven, washing area, living and sleeping areas, and was, as he understands, where Stuart Brickell lived. Because of how his SD is set out, there is ambiguity as to whether that is meant to refer to the building as it was occupied by Mr Brickell. In any case, no reference is made to a toilet.
30. The appellant goes on to state in his SD that he restored the building to the condition now evident, comprising living/dining/kitchen area equipped with gas oven and sink, a composting toilet and bathroom on the ground floor, and a mezzanine sleeping platform.
31. He says he has an arrangement with the nearest neighbour to collect water from time to time and that he buys bottled water. He further states that he has a gravity-fed, non-potable water system running to the house from a tank in a tree and collects rainwater for some of his needs (washing, cleaning, watering plants), and that waste water flows from the house to the ground where it soaks away. He explains that he uses a generator for electricity, that his oven and hob run from gas bottles and that a log burner is used for heating.
32. In his later evidence he asserts that the whole operation of creating a dwellinghouse was substantially complete before he had anything to do with Stuarts Lodge and that he changed the washing facilities and made other cosmetic alterations. However, it is difficult to reconcile the observations of Mr Gray with the facilities listed following the appellant's repairs to the building. The appellant's evidence is not therefore sufficiently clear and unambiguous to show whether it was he who provided the facilities for day to day living as a result of the works he carried out, or whether they were present, even in a different form, during the occupation by Mr Brickell.
33. Therefore, although it is likely that Mr Brickell lived in the building, the evidence is not sufficiently precise and ambiguous to demonstrate that it contained the facilities for day to day living so as to be described as a dwelling in *Gravesham* terms. It is more likely that the appellant created those facilities as part of his refurbishment, prior to him moving in. So, in temporal terms, the building did not amount to a dwelling until February 2015. Nevertheless, that is sufficient for the physical form to have gained immunity from enforcement action through the passage of time by virtue of s171B(1) of the 1990 Act.
34. Therefore, the building which I have already found to be immune from enforcement action can be described as a dwelling for the purposes of the LDC.

³ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

Use

35. In cases where there is a dispute as to whether a material change of use has occurred, it is necessary to ascertain the correct planning unit. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of material change of use. The general rule has always been that the materiality of change should be assessed in terms of the whole site concerned.
36. The main area of land within the red line boundary around Stuarts Lodge is oval shaped and relative to the appeal building is fairly substantial, as is the extent of land connecting it to the lane. The delineation of the main part of the site in particular also appears arbitrary insofar as I saw no physical enclosure or feature that would distinguish land within the site and land outside of it.
37. The appellant states that the land surrounding Stuarts Lodge has been used continuously for residential purposes for some 30 years or more. However, the appellant's SD does not address the use of land within the appeal site boundary and the totality of the evidence which relates to the same is very limited.
38. The evidence does indicate that the land was probably used as woodland until the residential use was introduced. Whatever the precise extent of the planning unit, it is probable that, as a matter of fact and degree, the introduction of the residential use resulted in a material change of use, either by creating a new residential planning unit or by creating a mixed use, with a primary residential component, as well as woodland.
39. However, I do not have the evidence before me to determine the precise extent of the planning unit, whether it is the entire area identified on the application plan or some smaller area.
40. On the basis of my reasoning below, whatever the precise boundaries of the planning unit, it clearly includes the land on which Stuarts Lodge has been constructed, namely its footprint. That does not necessarily mean no other land within the site has a lawful residential use; it just means that it cannot be certified as such, for the reasons explained.
41. In his SD the appellant states that Mr Brickell lived in Stuarts Lodge from around 1989 until sometime in 2013 when he was taken into care.
42. He asserts that the Council has already ruled that the land and property are immune from enforcement action due to the passage of time. To that end he has provided an email from the Council's enforcement officer dated 19 February 2018, which states that *'investigation has revealed that there are two buildings on the site, one being used for residential accommodation whilst the other will be a replacement dwelling as the other is old. There is no planning history for this site, and although we do have it on our systems as Stuart Lodge there is no council tax records for it. From what Mr Hyson says, and from speaking to the person who originally complained to the Council about the use, someone does appear to have been living there for a long time... To assist though, the aerial photographs the Council has appears to show the original building having been in existence for at least ten years. However, this does not prove a use has been taking place (ie: residential).'* The recently constructed building though cannot benefit from any such certificate and it is likely it will be

required to be removed'. (That later reference is evidently to 'Building 1', which, as noted, has been removed.)

43. The appellant explains that he would not have made the LDC application if he had known about the above which he describes as a ruling. However, the email is evidently an officer opinion rather than a formal LDC.
44. The SD of Mr Brown (the owner of the adjacent land and part of the access to the appeal site) states in his SD that the previous occupier, who he believed to be Mr Brickell, lived in the dwelling for a long time before he purchased the land (in 2008). He states that he is unaware of the identity of the current occupier but refers to the exhibited letter from the Council dated October 2009 which confirmed that, as the dwelling occupied by Mr Brickell had been in situ for a long time, no further action could be taken against him.
45. Although estoppel by representation may be claimed where the Council made representations that led the appellant to believe the development is lawful, it is a fundamental principle, however, that a Council may not fetter its discretion to issue an enforcement notice by any form of agreement⁴.
46. Nevertheless, the Council's letter of 13 July 2010 does set out its decision at that time not take enforcement action on the basis that the building had been in situ for considerably longer than that required to be immune and therefore that there was no further action the Council was able to take.
47. Moreover, a second exhibited letter from Mr Brown to the Council, dated 12 October 2009, refers to the dwelling being shown on the land registry plan and named Stuarts Lodge and to Mr Brickell living in this dwelling and confirming that he had done so for approximately 15 years. The appellant has also provided copies of letters addressed to Mr Brickell at Stuarts Lodge from September 1998, July 1999, July 2004 and March 2010.
48. The above correspondence therefore assists the appellant's case and contradicts that of the Council that it is not possible to establish that Mr Brickell *'lived in the building full time nor that he established a lawful residential use of the building that was on site at the time he left, as his use of the building, the facilities within it, his intentions and the length of his occupation are not known with any degree of certainty.'*
49. The most recent submission by Mr Brown is to confirm that the land surrounding Stuarts Lodge cannot have been in continuous residential use for 10 years by the applicant. However, the appellant does not argue that he has occupied the site for 10 years, rather, only since 2015.
50. The Council consider it likely any residential use of the building by the previous occupant (Mr Brickell) had been abandoned. Abandonment applies if a building or land *'remains unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned'*⁵. It is not enough for a use simply to have been allowed to dwindle away without being extinguished by another use⁶. Abandonment involves a cessation of use in such a way and for such a time as to give the impression to a reasonable

⁴ *Southend-on-Sea Corporation v Hodgson (Wickford)* [1961] 12 P&CR 165

⁵ Lord Denning in *Hartley v MHLG* [1970] 1QB 413

⁶ *Stockton-on-Tees BC v SSCLG & Ward* [2010] EWHC 1766 (Admin)

onlooker, applying an objective rather than a subjective test, that it was not to be resumed⁷.

51. The concept of abandonment can only be considered where a use has acquired lawfulness so the lawful use of land is capable of being abandoned and those rights lost⁸. In this case, it is more probable than not, that the residential use of the land on which the dwelling known as Stuarts Lodge has been constructed, had subsisted without material interruption for more than 10 years prior to Mr Brickell being taken into care, so as to become immune from enforcement action, pursuant to s171(3) of the 1990 Act.
52. In *Trustees of Castell-y-Mynach Estate*⁹, the Court suggested four criteria for abandonment: the period of non-use; the physical condition of the land or building; whether there had been any other use; and the owner's intentions as to whether to suspend the use or to cease it permanently.
53. In *Bramall*¹⁰, the court affirmed that criteria, and that the weight attached to each is a matter of judgment for the decision-maker. The task on the issue of the owner's intentions is to discern whether or not they intend to resume the active use of the land in question.
54. In this case, it is generally accepted that Stuarts Lodge was vacant for around two to three years between the time of Mr Brickell being taken into care and occupation by the appellant. In the context of abandonment, that is not a considerable period of time.
55. Having regard to the rudimentary nature of Stuarts Lodge, it is unreasonable to apply a conventional approach to how it might appear to any reasonable person because even when occupied it would not look in a particularly good state of repair. The same principle applies to habitation. The evidence shows that it was inhabited by Mr Brickell, despite being described as dilapidated by Mr Gray and likely not having the facilities to be described as a dwelling in Gravesham terms. In that regard, another person's view of a habitable standard is unlikely to be able to be fairly applied in this case.
56. In any event, the appellant explains that when he took occupation of Stuarts Lodge it still had all of its doors and windows, walls, a watertight roof and as such was not derelict. No evidence is provided which shows that not to be the case.
57. The Council accept that Stuarts Lodge was not used for any other purpose during the period in which it was vacant. It follows that there has not been any other intervening use that supplanted the residential use of the land.
58. Clearly it isn't possible for Mr Brickell to confirm whether he intended to suspend use or cease it permanently. Nevertheless, the appellant reasonably argues that as Mr Brickell made no arrangements for his personal effects to be removed from the cabin, that he intended to return and that the deterioration of his health and being taken into care should not equate to his abandonment of his home.

⁷ *Nicholls v SSE & Bristol CC* [1981] JPL 890

⁸ *M & M (Land) Ltd v SSCLG* [2007] All ER(D) 55

⁹ *Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40

¹⁰ *Bramall v SSCLG* [2011] JPL 1373

59. Indeed, the mere cessation of a use is not development; in *Panton & Farmer*¹¹ it was held that a use may be regarded as 'existing' and lawful even if it is dormant or inactive, for example, following the death of the landowner. In this case, there was similarly good reason for Stuarts Lodge being vacant.
60. The appellant has referred me to an appeal decision which deals with the issue of abandonment but other than a consistent application of the legal tests, direct parallels are limited. Nevertheless, applying the relevant legal tests in an objective manner to the facts and evidence in this case, I find that Stuarts Lodge and the residential use of the land on which it has been constructed had not been abandoned when the appellant took occupation.
61. Turning to the appellant's use of Stuarts Lodge, he states in his SD that it has been his primary residence since 7 February 2015.
62. The SD of the appellant's former partner, Georgina Scott, states that the appellant moved to his home in Stelling Minnis just after Christmas 2014 and that his main address for all of 2015 to mid 2018 (during their relationship) was the cabin. She states that to the best of her knowledge he still lived there. The SD is dated 9 August 2019.
63. The SD of James Tookey dated 9 August 2019 attests to the appellant living at Stuarts Lodge since at least April 2015 and that is his postal address, and that he had sent parcels and letters to him there. The SD of Paul Oliver Latham Dent dated 8 August 2019 states that he helped the appellant move into an old abandoned cabin in the woods just after New Years in 2015.
64. The SD of Harry Richard Chandler states that since 2014 he has visited the appellant at his place of residence at Stuarts Lodge on numerous occasions. The SD of the appellant's brother, Micah Jude Hyson, dated 9 August 2019 states that the appellant has lived in Stuarts Lodge since leaving Canterbury, although he does not explain when that was. He goes on to state that he visited him frequently for dinner and often stayed there.
65. A 'general affidavit' from Stephen John Hyson attests that the appellant has been living in sole residence at Stuarts Lodge since 2015, having visited him there since he moved in. It is unclear from that document whether it has been sworn before a solicitor thereby affecting its weight. Nevertheless, it is generally consistent with other evidence that the appellant moved into Stuarts Lodge around the beginning of 2015.
66. A letter from the manager of a construction company dated 29 June 2020 confirms that the appellant has worked for him for him in excess of two years (since February 2018) and that his only address has been from Stuart Lodge and that he had visited him there on several occasions. Although he then goes onto say that he is in no doubt that Stuarts Lodge is his only residence and has been for a minimum of five years, the relationship for the three years prior to his employment is not explained and how he is able to make that assertion.
67. An email from a neighbour, Jayne Gray, dated 13 July 2019, states that she has known the appellant for at least five years and that she can confidently state that he has lived at Stuarts Lodge for most of that time. She confirms that she had a pleasant relationship with him since well before her husband moved out on 26 December 2015.

¹¹ *Panton & Farmer v SSETR & Vale Horse DC* [1999] JPL 461

68. An email from Mr Gray to his planning consultant includes the text of an email purported to be from Ms Gray and Venessa Johnson of South Lodge Farm, which the agent states was apparently sent to the Council during the application but does not appear on its website. That text includes a number of statements which contradict the email sent directly by Ms Gray, including that they were aware of someone in the woods around the autumn of 2016.
69. The text states that around the summer 2017 they do not recall seeing him and believe he was working and or travelling elsewhere, possibly Germany, returning in December 2017/January 2018. They say that when he returned his brother moved into the woods when the appellant was working and staying in London 'on and off'. They further state that the appellant informed them in May 2018 that he was going to be working away in London for a few months.
70. They believe that the appellant's brother has been living there on and off, but they did not see the appellant again until the summer of 2019 and that during his time away he had spent three months in Thailand and Vietnam.
71. Mr Gray also states in his SD that it had been 18 months since anyone had resided at the wood and that the appellant lives and works in London and during the 18 months, spent 6 months in the Far East with his brother.
72. In response to the above, the appellant has sought to explain that he had lots of work in London and either commuted or stayed in an Airbnb, and that did not change his relationship with Stuarts Lodge. His brother also confirms that he would stay at Stuarts Lodge when the appellant was away. The appellant states that as a holiday he spent less than a month each in Vietnam and Thailand and that he was in Berlin for one week.
73. In consideration of the above, I am very mindful that in contrast to the email sent directly by Ms Gray, the purported text from an email is not dated nor are any email addresses included. For those reasons I attach very little weight to it.
74. Moreover, although the email from Ms Gray is contradicted by Mr Gray, she explains that he moved out in December 2015. In that regard, the appellant states that Mr Gray has not lived in South Lodge Farm, which is across the road from Stuart Lodge, since that time. No evidence is provided by Mr Gray that contradicts that version of events. Therefore, as it is Ms Gray that has lived close to the site since 2015, rather than Mr Gray, her evidence is likely to be more accurate.
75. An email dated 16 July 2019 from Chloe Hyson states that as far as she is aware, the appellant has been living in woodland near Stelling Minis for the past five years.
76. An email from Samai Chichester states that he started visiting the appellant at his home in the woods since before June/July 2015, also spending time there in the summer of 2016 and 2017.
77. An email from Sheila Wilton states that the appellant was a tenant in her cottage for two years before moving to the property in the woods, four and a half years ago. That email is dated 23 July 2019.
78. An email from Tom Twyman, dated 17 July 2019, recalls the applicant preparing to move into his house in the woods during December 2014. An email from Sarah Pinn states that the appellant took up woodland residence in

the area of Stelling Minnis at the beginning of 2015, after staying at her property. Reference within her email to major renovations has subsequently been clarified as being to her property, rather than Stuarts Lodge.

79. The sworn statement from Diane Steventon says that she frequently walks or rides a horse around the woods and that for at least the last year there has been no sign of life, no vehicles parked or other evidence of human occupation.
80. The appellant disputes the suitability of the area for horse riding and the likelihood of that occurring, as well as the likelihood of her walking close enough to make the above observations as there are no visible footpaths.
81. He also points out that from most places in the woods, Stuarts Lodge is impossible to see and based on my own site visit, I consider that likely to be the case. I therefore find the evidence of those specifically visiting the site to be more helpful in this case.
82. Ms Steventon says he (presumably the appellant) is not known by anyone in the village or the local shop so cannot imagine anyone has lived there for four years and been invisible. However, that is contradicted by the email from Mr Bruce Warden dated 17 July 2019 which states he has known the appellant as a local customer of his shop for at least four years.
83. An email from a builders company explains that the appellant carried out work for them as a self-employed carpenter and that his invoices dated April 2016 to September 2016 were addressed to Skylark Cottage, Church Lane, Selling, and thereafter from 2016 to June 2017 to Stuarts Lodge.
84. The agent for Mr Gray also seeks to highlight that the online phonebook still contains an entry for D Hyson at Skylark Cottage. However, the appellant explains that refers to his stepfather, David Hyson, and that Skylark Cottage is his parents home. He says he lived there for only one month in 2012 whilst recovering from an illness, but used it as a postal address for some time after that.
85. The Council highlight that at the time of the application the appellant had not registered the building for council tax, nor was he recorded on the electoral register. Unfortunately, such situations are not unusual and neither factor is conclusive. Moreover, the appellant has effectively lived 'off-grid' and as a result, the usual evidential expectation of utility bills etc cannot be reasonably applied. Nevertheless, a letter from the Royal Mail addressed to the appellant is provided from July 2017 and a single bank statement is similarly addressed to the appellant at Stuarts Lodge for the period between May and August 2016.
86. The Council further highlight that following the initial complaint in 2017 an Enforcement Officer visited the building in August of that year and on eight occasions during September to December 2017 and in January 2018 and January and February 2019. The Council state that no one was present on any of those visits. The appellant reasonably responds that if the visits were during normal working hours, it should be of no surprise that he wasn't around, as he works full-time.
87. Pulling the above together, although some of the submissions made on behalf of the appellant do not specifically identify the site in question, based on the totality of the evidence, it is likely, where references are made to a property or home in the woods, they relate to Stuarts Lodge. Similarly, although there are

some inconsistencies in terms of precise dates, the evidence points to a largely similar timeframe such that it is more likely than not, that the appellant moved to Stuarts Lodge in February of 2015.

88. Moreover, the appellant's evidence taken as a whole is sufficiently precise and unambiguous to demonstrate on the balance of probabilities that he or his brother have lived in Stuart Lodge without material interruption since February 2015 up to the time of the application. Even if Stuarts Lodge was vacant for extended periods, it did not lose its distinctive characteristics of a dwelling.
89. More significantly, up to the date of the application, it is shown that there was no intervening material change of use which extinguished the lawful residential use of the land on which Stuarts Lodge has been constructed, as established by Mr Brickell, prior to him being taken into care around 2012/2013.

Other Matters

90. I have noted the appellant's concerns over how the Council assessed his application and that he considers information was withheld from him. Nevertheless, there is no suggestion that I am missing any particular piece(s) of evidence or that the appellant has not had opportunity to comment on all of that before me, which I have considered anew.

Conclusions

91. Under s191(4) of the 1990 Act, any LDC granted must describe the existing use or development found to be lawful. That may not be exactly what was written on the application form, and so s191(5) enables a local planning authority to modify the description. An Inspector may exercise that power on appeal and is indeed obliged to issue a LDC for any existing use or development that is shown to be lawful on the facts and evidence.
92. In this case, that is the erection of a dwelling and the residential use of the land on which the dwelling has been constructed. As a matter of law, the land will include the building.
93. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Richard S Jones

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

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

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 April 2019 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black and annotated '2' on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

It has been demonstrated, on the balance of probabilities, that Stuarts Lodge can be described as a dwelling in *Gravesham* terms and was substantially completed four years before the date of the application, so the time for taking enforcement action under s171B(1) of the Town and Country Planning Act 1990 had expired.

It has been demonstrated, on the balance of probabilities, that the use of the land on which Stuarts Lodge has been constructed changed to residential use more than ten years before the date of the application and that use continued for more than ten years thereafter without material interruption. This is so, whether that land was part of a planning unit solely in residential use or part of a planning unit in mixed-use, including residential. The time for taking enforcement action under s173B(3) of the Town and Country Planning Act had therefore expired.

Signed

Richard S Jones

INSPECTOR

Date: [05 October 2023]

Reference: APP/L2250/X/20/3259875

First Schedule

Erection of a dwelling and the residential use of the land on which the dwelling has been constructed

Second Schedule

Land at Stuarts Lodge, South Lodge Road, Stelling Minnis, CT4 6BL

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use and operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use and operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: [05 October 2023]

by Richard S Jones BA(Hons), BTP, MRTPI

Land at: Stuarts Lodge, South Lodge Road, Stelling Minnis, CT4 6BL

Reference: APP/L2250/X/20/3259875

Scale: Not to Scale

