



Appeal Decision

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal Ref: APP/U2235/X/23/3324688

Tanner Farm Caravan Park, Goudhurst Road, Marden, Kent, TN12 9ND

- 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 Tanner Farm Caravan Park against the decision of Maidstone Borough Council.
 - The application ref 23/500884/LDCEX, dated 3 March 2023, was refused by notice dated 3 April 2023.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is existing breach of condition 5 of planning permission 87/1718 and breach of conditions 6 & 7 of planning permission 93/1450 for a period in excess of 10 years.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has been involved in discussions with the Inspectorate seeking to delay this appeal until the outcome of the High Court Challenge is known. I hope this decision explains why that was unnecessary and why the two decisions are not conceptually linked. Whatever the outcome of the challenge, the reasoning below remains the same.

Reasons

3. As I understand the situation the Council issued 2 enforcement notices in February 2022 relating to Tanner Farm Caravan Park. The first notice dealt with a material change of use of land to a recreational use. The second and more relevant notice alleged a breach of two conditions. Essentially they were the same in that they prevented the permanent stationing of any of the caravans, mobile homes etc. These notices were appealed and an Inquiry held over various dates in 2022 and 2023. A decision was issued in January 2024. Both appeals were dismissed and the notices upheld with minor amendments. A ground (d) appeal was made against the notice dealing with the conditions and the Inspector concluded there was insufficient evidence to show that any mobile homes had been stationed for more than 10 years prior to the issue of the notice. This appeal decision has been challenged in the courts and a hearing date is awaited.
4. During the course of the inquiry the appellant made the LDC application subject to this appeal. The Council's decision was also made before the Inquiry had finished and the appeal lodged the day after the Inquiry closed, but before the decision was issued.

5. The Council refused the application because there was enforcement notice in force at the time and the reason for the appeal was that the enforcement notice was not in force.
6. The legislation governing time limits and the issuing of enforcement notices is somewhat complicated and not written in an easily understandable way. However, The time limits for issuing an enforcement notice are set out in S171B of the Act. For a breach of condition this falls under s171B(3) any other breach of planning control, and the limit is 10 years¹. However, s171B(4) goes on to state

"the preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach."

7. Sub-section (b) above is known as the 'second bite' provision. If an LPA has issued an enforcement notice then they can re-issue that notice within 4 years, that is they can have a second bite. This enables local planning authorities to withdraw a notice and re-issue it without running out of time as the clock stops when the first notice is issued. It also prevents appellants from taking advantage of a delay caused by the making of an appeal. In this case the second bite provisions do not expire until February 2026. If the High Court challenge process drags on beyond that date the LPA can issue a second bite notice simply in order to keep the clock stopped².
8. Turning to the specific issue of LDC this is dealt with by S191 of the Act. This defines two circumstances when an operation is lawful and so an LDC can be issued. Subsection (2)(a) is when no enforcement action can be taken – usually because the time limits have been exceeded and (2)(b) when the operation contravenes an enforcement notice that is in force.
9. Taking the second-bite provisions and s191 together it is clear that the time for taking enforcement action has not expired because the clock was stopped with the issue of the first enforcement notice and a second bite notice can still be issued until 2026. So while an enforcement notice may not 'be in force' (s191(2)(b), the time for taking enforcement notice has not expired (s191(2)(a). Therefore an LDC cannot be issued.
10. No other evidence has been put forward to suggest a different decision to that reached by the Inspector should be made. Therefore this appeal turns solely on the technical issue explained above.

¹ These time limits have recently been changed so that all breaches are now 10 years, but that does not affect this appeal

² This interpretation is reconfirmed by the case of London Borough of Brent v Secretary of State for Housing Communities and Local Government, Ebele Muorah [2022] EWHC 1875 (Admin)

Conclusion

11. The LPA were correct in not issuing an LDC, although not because the enforcement notice is still in force, but because the time for taking enforcement action has not expired.

Simon Hand

INSPECTOR