



Appeal Decision

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 27th March 2025

Appeal Ref: APP/A2525/X/23/3331406

White Cottage, Annexe, Long Lane Gedney Hill, Spalding PE12 0PP

- 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 Andrew Bishop against the decision of South Holland District Council.
 - The application Ref H05-0635-23, dated 10 July 2023, was refused by notice dated 18 September 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
 - The use for which a certificate of lawful use or development is sought is described in the appeal form as follows: "Change of use from annex to residential".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal turns on the facts of the case and relevant planning law and whether the specific matter is lawful as defined by the 1990 Act. Planning merits, including personal circumstances and discussions between officers and the appellant, are not relevant at any stage in this process. I do not consider a site visit is necessary to determine the appeal and proceed on this basis.
3. The appellant's case is a little confused. On the one hand the existing use is described as incidental or ancillary to the use of the main dwelling. On the other hand, the claim is that the existing use is residential. There is lack of precision in the existing use for which an LDC is sought.
4. Precision in the terms of any certificate is vital so there is no room for doubt about what would be lawful at a particular date, as any subsequent change may be assessed against it. A certificate for existing use must include a description of the use. The description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to spell out the characteristics of the matter to define it with precision. The description in the LDC application form is more like a statement and it does not accurately describe the existing use. The description given in the Council's decision notice is also different.
5. There are powers available to me to modify the description should that be necessary¹. Indeed, I am obliged to issue an LDC for any use that is shown to be lawful on the facts and evidence, rather than refuse a certificate based on some error or misunderstanding in the application form. For clarity's sake, I have taken the description from the appeal form.

¹ The 1990 Act, at s191(4).

Inspector's reasons

6. In this appeal, the onus of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability.
7. The appellant says that in 2018 a "13 m x 7 m residential twin unit log effect cabin..." was put on the LDC application site. It is a wooden and metal structure placed on a slab of concrete with its own water electricity and septic tank. It has three bedrooms, a kitchen, living and dining room, and washing facilities². The claim is that at the time the cabin was used as ancillary or incidental accommodation in connection with the main dwelling (White Cottage).
8. The quantum of evidence before me indicates that the cabin falls within the definition of a twin unit caravan as set out in section 13 to the Caravan Sites Act 1968. Indeed, there is nothing to suggest that the cabin amounts to a building for planning purposes. That being so, the existing use is the stationing of a caravan for residential purposes. The applicable time limit after which no enforcement action can be taken is 10 years and not 4 years as asserted by the appellant³. For immunity to be achieved, the evidence needs to demonstrate, on the balance of probabilities, the residential use facilitated by the stationing of the twin unit cabin began on or before 10 July 2013 and continued thereafter for a period of 10 years without significant interruption.
9. The Council acknowledges that in 2018 pre-application advice to the appellant stated that if the site were to be used as domestic space ancillary to White Cottage, then it would not require planning permission. However, the appellant's own evidence does not clearly show the essential functional link between the occupation and use of the cabin and White Cottage exists. For example, meals were initially shared but stopped for medical reasons. There is nothing to indicate facilities within White Cottage are used and in any event the appellant confirms bills are separately paid because the cabin has its own utilities. The evidence does not clearly and unambiguously show occupiers of the cabin and main dwelling act as a single household.
10. On the contrary, the quantum of evidence indicates that the cabin's residential use amounts to a material change in the use of the land through subdivision of the planning unit and the creation of a separate dwelling. The cabin is physically disconnected by reason of its location and access. Photographic evidence is a snapshot in time but submitted images appear to show a small outdoor seating area to one side of the cabin and a marquee and children's play equipment in the background. Additionally, the cabin is connected to its own utilities and bills are separately paid. Local taxation record confirms payments from 2019 onwards. Additionally, the siting of the twin unit caravan and its use for self-contained residential purposes is likely to result in on and off-site planning consequences, which require assessment.

² Appellant's description of the

³ The breach occurred before the time limit law change in April 2024.

11. Pulling all the above threads together, the evidence presented shows that the existing use of the twin unit cabin is not incidental or ancillary to the primary residential use of the main dwelling. As a matter of fact and degree, I find that the existing use of the cabin as a separate main residential use does not fall within the scope of s191(2)(a), because the material change in the use of the LDC application site amounts to development and it is not time barred.
12. Another significant factor as to why an existing use LDC cannot be granted is the effect of s191(2) sub (b). The difficulty for the appellant is that on 13 July 2022, a enforcement notice was issued for the following breach of planning control: the unauthorised use as a residential caravan site by the stationing a mobile home for human habitation, the location of which is identified on the plan. That mobile home is the same one as the twin unit log effect cabin subject of this appeal. The steps required by the notice are to cease use as a residential caravan site and remove the twin-unit mobile home. The appellant maintains that they did not receive a copy of the enforcement notice although the Council dispute this claim. In any event, that issue may be a debate for another day. In the context of this appeal, the notice remains extant and in force.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of change of use from annex to residential was well-founded albeit for different reasons and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

A U Ghafoor

INSPECTOR