
Appeals Decisions

Site visit made on 16 April 2025

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 20th May 2025

Appeal Ref: APP/E2530/X/23/3332736

Building in Carlby Hawes Wood, off Stamford Road, Carlby PE10 0JG

- The appeal is made by Mr & Mrs Stephen Walker under section 195 of the Town and Country Planning Act 1990 against a refusal by South Kesteven District Council to grant a lawful development certificate.
- The application Ref: S23/1324, dated 17 July 2023, was refused by notice dated 15 September 2023.
- The application was made under section 191(1).
- The development for which the certificate is sought is the creation of a single dwellinghouse.

Appeal Ref: APP/E2530/X/23/3332741

Building in Carlby Hawes Wood, off Stamford Road, Carlby PE10 0JG

- The appeal is made by Mr & Mrs Stephen Walker under section 195 of the Town and Country Planning Act 1990 against a refusal by South Kesteven District Council to grant a lawful development certificate.
- The application Ref: S22/1733, dated 2 September 2022, was refused by notice dated 15 September 2023.
- The application was made under section 191(1).
- The development for which the certificate is sought is the creation of a single dwellinghouse including associated infrastructure (utility, decking, woodstore and septic tank).

Appeals Decisions

Appeal Ref: APP/E2530/X/23/3332736

1. The appeal is dismissed.

Appeal Ref: APP/E2530/X/23/3332741

2. The appeal is dismissed.

Reasons for the decisions

Appeal Ref: APP/E2530/X/23/3332736

3. The Council refused the application for the following reason: -

"The submitted evidence states that the building was completed and has been lived in as a main residence since October 2015 (less than 10 years). The

Council has no evidence to the contrary and on the balance of probabilities accept this position. However, pursuant to the Town and Country Planning Act 1990 (as amended) the time period for immunity from enforcement for the construction of the building is 4 years but its use attracts a 10 year immunity period. The use of the building as a dwellinghouse is therefore not lawful."

Appeal Ref: APP/E2530/X/23/3332741

4. The Council refused the application for the following reason: -

"The submitted evidence states that the building was completed and has been lived in as a main residence since October 2015 (less than 10 years). The Council has no evidence to the contrary and on the balance of probabilities accept this position. However, pursuant to the Town and Country Planning Act 1990 (as amended) the time period for immunity from enforcement for the construction of the building is 4 years, but its use attracts a 10 year immunity period. The use of the building as a dwellinghouse is therefore not lawful. As the use of the building as a dwelling is not lawful until the passage of 10 years then the use of the surrounding land for ancillary residential purposes, including the associated infrastructure, is also not lawful."

Both appeals - assessments

5. Section 195 requires assessments to be made as to whether the Council's refusals of the applications are well-founded. The assessments are based on the lawfulness of the developments at the times of the applications. The planning merits of the developments are not relevant to the appeals and there are no planning applications before me.
6. Section 191(2) states that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired. At the times of the applications, the time limits were those specified in the version of section 171B before it was superseded in 2024. The relevant parts of this version are as follows: -
- "(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.
 - (2) 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.
 - (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."
7. There is no dispute between the parties that the building and its associated infrastructure were erected without the necessary planning permission in 2015 and have been used continuously as a single dwellinghouse since then. The appellants claim that as a consequence the developments are immune from enforcement by virtue of the provisions of section 171(B) and that the

certificates applied for should therefore be granted. The Council accept that the building operations involved are immune from enforcement action by virtue of section 171(B)(1) but contend that their use as a single dwellinghouse is subject to the ten-year rule applied by section 171(B)(3), because section 171(B)(2) does not apply where, as in this instance, there has not been a change of use of a building. Both parties have referred to the Supreme Court's decision in *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15 and the judgment of Supperstone J in the High Court decision in *Lawson Builders Ltd & Lawson v SSCLG & Wakefield MBC* [2013] EWHC 3368 Admin.

8. In *Lawson*, Supperstone J stated at paragraphs 50 and 51: -

"50. Finally, Ground 6 attacks paragraph 12 of the Decision Letter. Mr Goatley submits that the *Welwyn Hatfield* case can be readily distinguished upon its facts. Further he submits that that decision is not authority for the proposition that, pursuant to the statutory regime contained in section 171(B) of the Act, a building, as a structure, can acquire immunity from any requirement for its removal, whereas its use cannot.

51. Plainly the facts of that case are different from those of the present case, but the relevance of the *Welwyn Hatfield* decision is the statement made by Lord Mance at paragraph 17 of his Opinion. If a dwelling house is erected unlawfully and used as a dwelling house from the outset, as in the present case, the unlawful use can still properly be the subject of enforcement action within ten years, even if the building itself, as a structure, becomes immune from enforcement action after four years."

(An appeal against the High Court's decision in *Lawson* was dismissed by the Court of Appeal [2015] EWCA Civ 122. The appeal did not involve consideration of *Welwyn Hatfield*.)

9. The paragraph 17 referred to contains the following passage: -

"The building attracts a four year period for enforcement under subsection (1), while its use attracts, at any rate in theory, a ten year period for enforcement under subsection (3). I say in theory because there is a potential answer to this apparent anomaly, one which would apply as much to a dwelling house as to any other building. It is that, once a planning authority has allowed the four year period for enforcement against the building to pass, principles of fairness and good governance could, in appropriate circumstances, preclude it from subsequently taking enforcement steps to render the building useless."

10. The appellants have also drawn attention to the third sentence in paragraph 68 of *Welwyn Hatfield*. I have set out below the full text of what Lord Brown stated in paragraph 68: -

"With regard to the first issue – the true construction and application of section 171B(2) – there is nothing of substance I want to add to Lord Mance's detailed judgment on the point. I find his reasoning entirely convincing. Parliament appears to have contemplated that a dwelling house built by way of unpermitted operational development would be enforced against, if at all, within the requisite four-year period provided for by section 171B(1) – failing which the authority probably would not seek

ordinarily to enforce against its continued use as a house. That no doubt explains why the protection of a four-year (as opposed to a ten-year) limitation period for enforcement in respect of single dwelling-houses was not extended to use as such but only to a "change of use of any building [inferentially, some building other than a newly built house] as a single dwelling house". Either way, as Lord Mance demonstrates, section 171B(2) is simply not apt to encompass the use of a newly built house as a dwelling house and the nil use concept provides no coherent escape from this conclusion."

11. Lord Rodger agreed with what Lord Mance stated on this point. Lord Phillips, Lord Walker, Lady Hale and Lord Clarke all agreed with Lord Mance without expressing any additional opinions.
12. In the current appeals, counsel has advised the Council that the "building has been in place for more than 4 years but the use of that building as a single dwellinghouse has not been ongoing for 10 years (as the building was only erected in 2015) and so is not immune in accordance with *Welwyn Hatfield* and *Lawson*." The appellants have put forward several arguments why this advice should not be followed. I have considered these arguments in the bullet points below and reached the conclusions recorded there: -
 - The appellants assert in paragraph 4.14 of their appeal statement dated October 2023 that the availability of enforcement action in *Welwyn Hatfield* was due to the conduct of the appellant in that case and put forward Lord Mance's concluding statement in paragraph 58 as support for this proposition. I have set out paragraph 58 in full below. I do not consider that it changes what I have set out in paragraphs 8 to 11 above.

"58. For the reasons I have given, I do not consider that sections 171B(2) and 191(1)(a) are applicable to the facts of this case. Had I considered otherwise, I would have concluded that their language could not have been intended to cover the exceptional facts of this case, where there was positive deception in the making and obtaining of fraudulent planning applications, which was directly designed to avoid enforcement action within any relevant four year period and succeeded in doing so. This is a conclusion which would still be relevant, were any application to be made for a certificate under section 191(1)(b) or any reliance sought to be placed upon section 171B(1) to preclude enforcement action in respect of the building itself. In the present case, I would allow the Council's appeal, and set aside the grant of the certificate under section 191(1)(a)."
 - The appellants draw attention to the High Court decision in *Caldwell v SSLUHC* [2023] EWHC 2053 (Admin) (which was upheld by the Court of Appeal in *SSLUHC v Caldwell* [2024] EWCA Civ 467.) The Inspector here erred in finding that an enforcement notice could require the removal of a dwellinghouse that had become immune from enforcement when the notice was directed at the change to residential use of the land on which the dwellinghouse was built, that change having not acquired immunity. The case concerns the scope of the *Murfitt* principle. It does not affect the reasoning in *Welwyn Hatfield* and *Lawson*.

- The appellants assert that the only breach of planning control in the appeals is operational development, because a building is permitted to be used for the purpose for which it was designed and constructed, which in this instance is a dwelling. I do not consider that this is the case where the dwelling has been built without planning permission. A similar point was raised and rejected in the appeal decision submitted by the Council (see appeal decision APP/P0240/X/16/3151905, paragraphs 17 and 18).
- The appellants refer to appeal decision APP/B3410/X/19/3239498 in which a certificate of lawful use was granted. The circumstances in that appeal are not comparable since the certificate related to the use as an independent dwellinghouse of an existing building that was already in residential use. On the other hand, the reasoning in *Welwyn Hatfield* and *Lawson* was applied by the Inspector in the appeal decision submitted by the Council (see appeal decision APP/P0240/X/16/3151905, paragraphs 19 to 26 inclusive).

Both appeals - conclusions

13. Certificates can only be issued under section 191 if the uses or operations are lawful within the meaning of section 191(2). For the reasons given, I have come to the conclusion that the terms of section 191(2) would not be complied with in these appeals because the time has not expired for enforcement action against the use as a dwellinghouse of the building and the building including its associated infrastructure. There are issues relating to the actual taking of enforcement action in these circumstances, as indicated by Lord Mance and Lord Brown and by *Caldwell*, but these do not change the meaning or effect of section 191(2) itself. It is for the Council to decide about the expediency of taking any enforcement action following my appeals decisions; this is not a matter for me to determine or comment upon in the context of the appeals.
14. I am satisfied that the Council's refusals of both applications are well-founded. The appeals have therefore been dismissed.

D.A.Hainsworth

INSPECTOR