
Appeal Decision

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2025

Appeal Ref: APP/U2235/X/24/3357771

Rosewood Farm, Scragged Oak Road, Delting, Kent ME14 3HL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Town & Country Planning Partnership Limited against Maidstone Borough Council.
- The application ref: 24/503666/LAWPRO is dated 30 August 2024.
- The application was made under section 192(1)(a) of the 1990 Act.
- The use for which a LDC is sought is the siting of a caravan for use ancillary to the lawful agricultural use of the site would not constitute development for which planning permission would be required, the caravan would be sited within the redline surrounding the application site shown on the accompanying plan.

Decision

1. The appeal is allowed and attached to this decision is a LDC describing the proposed use which is found to be lawful.

Applications for costs

2. An application for costs was made by Town & Country Planning Partnership Limited against Maidstone Borough Council. This application for costs is the subject of a separate decision.

Preliminary Matters

3. The LDC application was not validated by the Council when it was made. The evidence before me states that the Council failed to give notice of its decision on the LDC application within the appropriate period because of a dispute over the provision of a Community Infrastructure Levy (CIL) 1 form during the validation process. As such, the appeal has been determined on this basis.
4. The description of the use for which the LDC is sought, in the banner heading above, is taken from the application form. However, during the validation process the Council asked the appellant, in a letter dated 3 September 2024, whether he was happy with the amended description of 'Lawful Development Certificate for proposed siting of a caravan for use ancillary to the lawful agricultural use of the site'. The appellant confirmed in an email dated the 9 September 2024 that the amended description was acceptable. I have therefore used that amended description within this decision.
5. The LDC application has been made under section 192(1)(a) of the 1990 Act which relates to a proposed use. The proposed use relates to the siting of a caravan for use ancillary to the lawful agricultural use of the site. The site is the whole of the area edged in red on the submitted location plan. The application form indicates

that the site was in agricultural use at the time of the LDC application. Yet, the evidence before me indicates, on the balance of probabilities, that the area edged red on the location plan constitutes a single planning unit¹ that was in a mixed use of agriculture and a gypsy and traveller site on the date of the LDC application, 30 August 2024. I note that the evidence before me also indicates that prior to the LDC application being made the use as a gypsy and traveller site was in breach of condition/s attached to a planning permission.

6. Nevertheless, the description of the proposal is that the caravan would be stationed on the site edged in red on the submitted location plan and it would be used ancillary to the lawful agricultural use of that site. The description does not mention a mixed use. Moreover, a legal opinion submitted in support of the appeal indicates that *'the argument, in essence being put forward was that once the planning permission for the personal mixed use of agriculture and as a gypsy/travellers site had expired then the lawful use would revert to that of agriculture to reflect the position before that temporary permission was granted. I note that the application itself was on that basis ...'* I have dealt with the appeal on the basis of the description set out above for the future use of the site edged in red on the submitted location plan for the siting of an ancillary caravan to a lawful agricultural use.
7. During the appeal process the procedure for determining the appeal was changed from a Hearing to written representation without a site visit. This is because in my judgement the issues/appeal arguments with regard to this case can be clearly understood from the evidence submitted and therefore met the Planning Inspectorate's criteria with regard to the written representation procedure. When the main parties were notified of the change in procedure on 7 February 2025 the Council had not submitted a Statement of Case as required within the timetable set out in the start letter.
8. Therefore, I requested within that notification of procedure change that *'the Council without prejudice, confirms by 14:00 on 21 February 2025 whether it considers it would have approved or refused the LDC application if it had determined it and the reasoning supporting that approval or refusal'*. The Council submitted a full Statement of Case by that deadline and the evidence within it went beyond that requested by me in the notification of the 7 February 2025. However, the appellant has had the chance to respond to and comment on that evidence. Therefore, I do not consider that any party has been prejudiced by the submission of that evidence.
9. The Council stated within its Statement of Case that *'if the application had been valid, the council would have refused the certificate of lawful development on the grounds that the application fails to demonstrate that the caravan would not require the benefit of planning permission'*.

Main Issues

10. The main issues in this case are whether the LDC application was a valid application and if it is had the Council refused to grant a LDC in respect of the proposed use would that refusal have been well-founded.

¹ 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 a change of use. Caselaw has held that the planning unit is usually the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes, the concept of physical and functional separation is key.

Reasons

Valid application

11. Section 193(1) of the 1990 Act provides that *'An application for a certificate under section 191 or 192 shall be made in such manner as may be prescribed by a development order and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the local planning authority.'*
12. Paragraph 005² of the LDC part of the Planning Practice Guidance (PPG) states that Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the 2015 DMP) specifies the contents of an application and how it must be submitted. It goes on to state that there is a different application form for each type of certificate, but either type must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application, along with the relevant application fee.
13. Article 39(1) of the 2015 DMP provides that *'an application for a certificate under section 191(1) or 192(1) of the 1990 Act (certificates of lawfulness of existing or proposed use or development)(1) must be made on a form published by the Secretary of State (or on a form substantially to the same effect) and must, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the particulars specified or referred to in the form'*. The LDC application was made on a form generated by the Planning Portal which is the application service for the planning system in England and Wales. There is no question or particulars on that form that refers to the requirement to submit or complete a CIL 1 form. Therefore, in that respect the LDC application meets Article 39(1) of the 2015 DMP.
14. Article 39(2) of the 2015 DMP provides that an LDC application must be accompanied by-
 - (a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;
 - (b) such evidence verifying the information included in the application as the applicant can provide; and
 - (c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.
15. The Council requested the provision of 3 things in a letter to the appellant dated 3 September 2024. Those items related to the name and address of the applicant, the relevant fee and the proposed amended description for the LDC application. There is no dispute that those 3 things were submitted by the appellant by the 10 September 2024. I therefore find that the LDC application meets Article 39(2) of the 2015 DMP. Paragraphs (3) and (4) of Article 39 are not relevant to this LDC application as the site is not Crown Land and it does not specify 2 or more uses.
16. Paragraph 12 of Article 39 provides that a 'valid application' means an application which complies with the requirements of paragraphs (1) to (4) and is accompanied

² Reference ID: 17c-005-20140306

by the appropriate fee. The LDC application meets those requirements, and the appropriate fee was paid to the Council. Therefore, I find that the LDC was a valid application for the purposes of Article 39 of the 2015 DMP and section 193 of the 1990 Act.

17. The Council have drawn my attention to an appeal decision³ relating to an LDC application for the siting of a caravan for use ancillary to the lawful agricultural use of the land (the previous appeal decision). I acknowledge that in that decision the Inspector refers to section 62(3) of the 1990 Act and Article 11 of the 2015 DMP. However, the LDC application is not an application for planning permission and therefore in my judgement section 62(3) of the 1990 Act and Article 11 of the 2015 DMP are not relevant to this case.
18. I acknowledge that the CIL 1 form generated by the Planning Portal states on it that *“...all applicants for full planning permission, including householder applications and reserved matters following an outline planning permission, and applicants for lawful development certificates are required to provide the following information”*. However, as stated above, a valid LDC application is that which meets the specified items at paragraph 12 of Article 39 of the 2015 DMP.

Whether refusal of the LDC would have been well-founded

19. In order for an LDC to be granted under section 192 of the 1990 Act, the burden of proof is with the appellant and the appropriate test of the evidence is on the balance of probabilities. The onus is firmly on the appellant to show that the proposal would be lawful at the time the application was made. My decision rests on the facts of the case, on relevant planning law and judicial authority.
20. As stated previously, the LDC application relates to a proposal for the siting of a caravan that would be stationed on the site shown edged red on the location plan, that the whole of that site would be in agricultural use and that the use of the caravan would be ancillary to that agricultural use. The appellant considers that the stationing of a caravan for that purpose would not require planning permission.
21. Section 55(1) of the 1990 Act provides that “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(e) of the 1990 Act sets out that the use of any land for the purposes of agriculture shall not to be taken for the purposes of the 1990 Act to involve development of the land.
22. Section 191(2) of the 1990 Act sets out that uses and operations are lawful at any time if: a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
23. The term ‘caravan’ is defined in section 29(1) in the Caravan Sites and Control of Development Act 1960 (CSCDA) and what constitutes a ‘twin-unit caravan’ is defined in section 13 of the Caravan Sites Act 1968 (CSA). As such, in law, a

³ Appeal Ref: APP/U2235/X/23/3332814

caravan is only a caravan if it meets the definition in section 29 of the CSCDA and as amended by section 13 of the CSA.

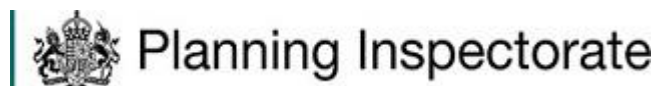
24. The siting of a caravan is normally taken as constituting a use of land and not operational development. Moreover, the use of the whole of the site, for agriculture would not involve development as provided by section 55(e) of the 1990 Act. A caravan, which is a caravan in law, and which is used for ancillary purposes to the agricultural use of the whole site, would not be development for the purposes of the 1990 Act, since there would be no operational development, and no material change of use.
25. The Council considers that whether or not there is an agricultural enterprise at the site and whether operations equate to agricultural activity for which an onsite presence is required are relevant to this case. I also note that the Inspector in the previous appeal decision indicated that the latter of those points is not relevant to the question as to whether the proposed use constitutes development in the first place. I have no reason to disagree with the Inspector in this respect.
26. However, with regards to the first point whether or not there is an agricultural enterprise at the site is also not relevant, in my judgement. As stated above, the LDC application relates to a proposed use of the site edged red therefore the existing or current use, at the time the LDC application was made, is not relevant. Moreover, a grant of a LDC is dependent on the appellant demonstrating, on the balance of probability, that the proposed use would be lawful. Therefore, the LDC before me is determined on the basis of the specific evidence, which includes legal opinions, submitted with this case.
27. Clearly, if an LDC is granted on the basis of a specific set of circumstances and if the 'caravan' did not meet the definition laid down in section 29 of the CSCDA and as amended by section 13 of the CSA and/or if that caravan and/or the site was used in a different manner to that proposed it would be open to the Council to consider whether a breach of planning control had occurred at that point in time.
28. Thus, for the reasons given above, I find that the proposed siting of a caravan for use ancillary to the lawful agricultural use of the site would have been lawful at the time of the LDC application.

Conclusion

29. For the reasons given above I conclude, on the evidence now available that, had the Council refused to grant a certificate of lawful use or development in respect of the proposed siting of a caravan for use ancillary to the lawful agricultural use of the site that refusal would not have been well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

D Boffin

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 30 August 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the whole of the site for agriculture would not involve development as provided by section 55(e) of the 1990 Act. A caravan, which is a caravan in law, and which is used for ancillary purposes to the agricultural use of the whole site, would not be development for the purposes of the 1990 Act, since there would be no operational development, and no material change of use.

Signed

D Boffin

Inspector

Date: 22nd May 2025

Reference: APP/U2235/X/24/3357771

First Schedule

Lawful Development Certificate for proposed siting of a caravan for use ancillary to the lawful agricultural use of the site.

Second Schedule

Rosewood Farm, Scragged Oak Road, Delting, Kent ME14 3HL

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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 effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 22nd May 2025

by D Boffin

Land at: Rosewood Farm, Scragged Oak Road, Detling, Kent ME14 3HL

Reference: APP/U2235/X/24/3357771

Scale: Not to Scale

LOCATION PLAN



ROSEWOOD FARM, DETLING