



Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 28 July 2025

Appeal Ref: APP/C1570/X/24/3347659

Factory, Green Street, Elsenham, Essex CM22 6DS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kevin Hinken against the decision of Uttlesford District Council.
 - The application Ref UTT/24/1074/CLE, dated 22 April 2024, was refused by notice dated 27 June 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is use as a dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Due to the locus of the Decision being concerned with the sufficiency of evidence submitted as to lawfulness, it was not necessary for me to conduct a site visit to determine the appeal. The Decision was made on the evidence.
3. I have used the name of the appeal property that was provided on the application form.

Main Issue

4. The main issue is whether or not the Council's refusal of the LDC was well-founded.

Reasons

5. The appeal building was given approval as a detached garage for the dwelling known as The Old Dairy Farm under planning reference UTT/1643/08/FUL.
6. From the Building Survey Report dated 17 December 2010 it appears that the newly constructed garage had already been converted by that date to living accommodation consisting of a small living/dining area, bedroom and shower room. It also seems that, when the appellant purchased The Old Dairy Farm in June 2011, there was what was referred to in the submitted conveyancing correspondence as a 'lodger' living within the converted garage. I am satisfied from documentary evidence, including statutory declarations from himself and others, that the mentioned occupier was Mr Pavely who resided in the appeal building continuously until May 2021.

7. The provisions of section 171B(2) of the Act provide that 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 4 years beginning with the date of the breach.
8. I am accordingly satisfied on the balance of probabilities due to the evidence submitted that, by the time Mr Pavely ceased to reside in the appeal building (which appears to have had all the facilities required for day to day private domestic existence), lawfulness had been acquired for the unauthorised change of use to a dwellinghouse separate from The Old Dairy Farm.
9. However, in LDC applications/appeals of this nature (section 191(1)(a)) it is for the applicant/appellant to demonstrate with sufficiently precise and unambiguous evidence that the use for which the certificate is sought was lawful at the date of the application. In this case, the date is 22 April 2024.
10. While I give moderate weight to the statutory declarations solemnly made before a solicitor, those dated 18 April 2024 say (rather briskly compared to the fuller and more precise details surrounding Mr Pavely's occupation) that *"Upon Mr Pavely's leaving, the appeal property was re let and remains let today"*. Other than that sentence, which is not in itself sufficiently precise and unambiguous as to the date when the property was re let or how it was used in any resulting gap, I have seen very limited substantive evidence as to the asserted letting of the building and use as a separate dwellinghouse since Mr Pavely's departure on 31 May 2021.
11. It is a well-established legal planning principle that accrued immunity from enforcement action can be lost should there be a subsequent material change of use. In the absence of sufficient evidence as to the use of the appeal building between 31 May 2021 and 22 April 2024, it has not been adequately demonstrated by the appellant on the balance of probabilities that there was not a material change of use¹ at any time during that nearly 3 year period causing the earlier accrued immunity to have been lost.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use as a dwelling was well-founded 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.

Andrew Walker

INSPECTOR