



Appeal Decision

Site visit made on 10 June 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2025

Appeal Ref: APP/G2245/X/24/3337716

Deans Piggery, Firmingers Road, Well Hill, Orpington, Kent BR6 7QQ

- 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 Dean Truder against the decision of Sevenoaks District Council.
- The application ref 23/02217 LDCEX, dated 10 July 2023, was refused by notice dated 25 September 2023.
- The application was made under section 191(1)(a) and (b) of the Town and Country Planning Act 1990 (as amended).
- The use and development for which a certificate of lawful use or development is sought is described as: ‘ 1. Stationing of mobile home for residential use continuously since 1994
2. Erection of single storey utility bldg since 1995.
3. Erection of conservatory since 2011, and
4. Use of surrounding garden since 1994’

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant states on their appeal form that they are no longer pursuing No 2, which is the erection of single storey utility building. I shall therefore only consider it insofar as it is relevant to the other elements which the appellant wishes to pursue, namely the stationing of the mobile home, the erection of the conservatory and the use of surrounding garden.

Main Issue

3. The main issue is whether the Council’s refusal to grant a lawful development certificate (LDC) is well-founded.

Reasons

4. An application under section 191(1)(a) and (b) of the Act¹ seeks to establish whether (a) any existing use of buildings or other land is lawful and (b) whether any operations which have been carried out in, on, over or under land are lawful. Section 191(2) 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.

¹ Town and Country Planning Act 1990 (as amended)

5. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development is lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
6. The appeal site comprises what appears to be a twin unit caravan, around which has been constructed a brick skirt or plinth. I was able to look between the brick skirt and the bottom of the unit and saw a void, and what appeared to be a jack. To one side is what is referred to as a utility room, which is constructed of brick, with timber framed windows and a tiled roof. The utility room connects to the caravan.
7. The other side of the caravan is a conservatory, constructed of brick, uPVC and glazing. Both the utility room and the conservatory are physically connected to the caravan, and it appears as a single structure. The garden is mostly laid to lawn, with paving slabs around and leading to the structure and is bound by fencing and mature vegetation. Domestic paraphernalia was evident during my visit, including bins and children's toys.
8. The appellant has provided me with a certificate of lawful use or development, dated 2 June 1995, reference SE/95/0599, which certified that use of the site for the stationing of a single residential caravan was lawful. The lawfulness of the use is conclusively presumed as certified. However, lawful rights can be taken away by an enforcement notice.
9. Evidence has also been provided which shows the structures have been *in situ* for a significant period of time, well in excess of either the 4 or 10 year immunity periods set out in the Act. However, the Council's reason for refusing the application was that the mobile home is subject to an extant Enforcement Notice which requires its removal. This appeal will therefore turn on whether the uses and operations constitute a contravention of any of the requirements of any enforcement notice then in force.
10. The Council has provided me with an enforcement notice, dated 29 December 1995, which alleged 'without planning permission, the erection of a structure incorporating a mobile home together with brick enclosure and extension (shown shaded on the attached plan)'. The notice required the recipient to remove the structure from the land. This notice was appealed on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the 1990 Act as amended by the Planning and Compensation Act 1991.
11. From the evidence before me and the Inspector's description of the works that had been carried out, it seems likely that the structure under consideration was the mobile home and single storey utility room which are before me. The Inspector in that appeal, reference T/APP/C/96/G2245/641889 dated 10 January 1997, found that the breach had occurred as a matter of fact, that the alleged breach constituted operational development for which planning permission was necessary and refused planning permission for the matters alleged in the notice. Significantly, the Inspector varied the period for compliance, giving the appellant 12 months for compliance, upheld the notice as varied and refused to grant planning permission on the application deemed to have been made.

12. Section 173A of the Act provides that a local planning authority may (a) withdraw an enforcement notice issued by them; or (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9). The Council advise that a report to Committee on 18 July 2002 resolved that the enforcement notice should be varied to allow the time for compliance to be extended from 12 months to 5 years (from 18 July 2002) or until such time as the mobile home is no longer required for occupation the current Mrs Truder or her husband, Mr Truder senior and continuing occupation to be only by those persons.
13. Following the use of its powers under section 173A(1), a local planning authority is required to give notice of the exercise to persons who have been served, or would be served if the notice were re-issued. While it is not clear from the evidence that the enforcement notice was formally waived or relaxed, even if it was, it seems unlikely the Council waived or relaxed the requirement of the notice to remove the structure.
14. An application for an LDC was made in 2019 in respect of the appeal site, and was subsequently refused on appeal, for the formation of a building by the adaptation of a mobile home, and a material change of use of the resultant building and land to a residential use, reference APP/G2245/X/19/3235716. In that case, the Inspector found that it had not been demonstrated that the works undertaken to the original unit had resulted in the formation of a building and they dismissed the appeal.
15. While I note the findings of the Inspector, it seems unlikely they were aware of the enforcement notice which had been served in respect of the site, or the appeal decision made by the Inspector in 1997, since the Inspector did not refer to either document. Indeed, the Council acknowledges that it did not report the existence of the enforcement notice on application 19/01195/LDCEX or the accompanying appeal.
16. Section 285(1) of the Act states that the validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought. The Inspector in 1997 plainly considered whether the mobile home, with brickwork constituted the erection of a dwelling and constituted operational development for which planning permission was necessary. It is not open to me to make a different finding in that regard and the requirement to remove the structure from the land is of continuing effect.
17. It seems that the enforcement register was updated to include reference to the 1995 Enforcement Notice on 13 April 2019, shortly after the death of the previous occupants in March 2019. While the omission of the particulars of the enforcement notice from the Council's enforcement register may have provided a defence against prosecution for anyone claiming to not be aware of the notice, it seems likely that the notice would still have been in force.
18. Section 191 of the Act makes it clear that for something to be lawful, it must not constitute a contravention of **any** of the requirements of **any** enforcement notice then in force (my emphasis). Even if the works were carried out a significant time ago, or include works which have been carried out since the enforcement notice

was issued, as they constitute a contravention of the requirements of an enforcement notice in force, they are not lawful by virtue of the passage of time.

19. A use cannot survive the destruction of buildings necessary for it to be carried on and so the use of the garden, which would have been incidental to the enjoyment of the dwellinghouse, is also not lawful, since the dwelling is necessary for the residential use to be carried on.
20. Thus, I find on the balance of probabilities, at the date of the LDC application, the stationing of a mobile home for residential use, the erection of a conservatory and the use of surrounding garden since building were not lawful and the appeal must fail.

Conclusion

21. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the stationing of a mobile home for residential use, the erection of a single storey utility building, the erection of a conservatory and the use of surrounding garden is 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).

M Savage

INSPECTOR