

Appeal Decision

Site visit made on 12 January 2026

by **John Whalley**

an Inspector appointed by the Secretary of State

Decision date: 19th January 2026

Appeal ref: APP/T2405/X/24/3352690

Mobile Home 1, Acorn Park, Hinckley Road, Sapcote, Hinckley, Leicestershire LE9 4LH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Blaby District Council to grant a certificate of lawful use or development.
- The appeal was made by Mr John Doherty.
- The application, dated 6 November 2023, Council ref: 23/0938/CLE, was refused by a notice dated 24 January 2024.
- The Application for a Certificate of Existing Lawful Development was for: Retention and use of mobile home for residential purposes in breach of Condition 2 attached to planning permission No. 02/0184/1/PX at Mobile Home 1, Acorn Park, Hinckley Road, Sapcote, Hinckley, Leicestershire LE9 4LH.

Summary of decision: The appeal is dismissed.

Appeal property

1. The appeal property is a single storey chalet style residential dwelling on the northern corner of a rectangular parcel of land to the north of Smithy Lane, the address being given as Mobile Home 1, Acorn Park, Hinckley Road, Sapcote. There is a single storey dwelling, Acorn Cottage, fronting Smithy Lane. There are mobile home parks to the north and west.

Applications

2. An earlier application, ref: 20/1311/CLE, subsequently refused by the Council, was for a certificate of lawfulness in respect of the current application dwelling. It sought confirmation that the lawful use of the mobile home was that of a residential dwelling. That was within use class C3 Dwellinghouses of The Town and Country (Use Classes) Order 1987 as amended, (the Order), not subject to its occupation being constrained by condition 2 to planning permission 02/0184/1/PX. Condition 2 states – *“The mobile home hereby permitted shall enure solely for the benefit of the applicant’s mother, Mrs E Docherty and the mobile home shall be removed from the site when her occupation ceases.”* - (enure - the coming into operation or taking effect of a legal provision or agreement). N.B. Although Condition 2 to planning permission 02/0184/1/PX refers to *Mrs E Docherty*, her name is elsewhere shown spelled as Mrs E Doherty.
3. The application the subject of the current appeal is for a certificate of existing lawful development for - *Retention and use of mobile home for residential purposes in breach of Condition 2 attached to planning permission 02/0184/1/PX*. The application therefore seeks certification that the occupation of the mobile home is now that of an unrestricted residential dwelling, not limited by planning condition 2 to occupation only by the Appellant’s mother, Mrs Doherty.

4. The Appellant's assertion was that the mobile home permitted by planning permission 02/0184/1/PX had never been occupied by Mrs Elizabeth Doherty. Instead, it had been occupied in breach of Condition 2 to the permission by the Appellant Mr Doherty and his family since 2003.

Selected legal background

5. S.191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; they may make an application for the purpose to the local planning authority. Where that application is refused or deemed to have been refused and an appeal made, the burden of proof based on the balance of probabilities to show that the decision was not well founded lies with the appellant.
6. Section 171B(3) of the Act states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. The 10 year rule provides immunity from a local planning authority taking enforcement action for a breach of a planning condition that occurred a long time ago. However, it does not make the original condition itself disappear or become invalid. For instance, success in this appeal would be limited to the 10 year period to 24 January 2024, the date of this application. Any possible further breach of condition 2 to planning permission 02/0184/1/PX would then be susceptible to renewed enforcement action by the Council. If a breach of a 'continuing requirement' condition ceases because of discontinuance of the offending activity, that breach is at an end. The clock starts again and future non-compliance amounts to a new, separate breach subject to enforcement action for 10 years, (the case of *Nicholson v SSE & Maldon DC* [1998] JPL 553 is authority for that position). Here, successful defence against any such action here would have to show that the breach of condition 2 had also been continuous without interruption since 24 January 2024.

Considerations

7. Mr John Doherty said the application mobile home was stationed on the land in 2002. Although intended for occupation by his mother, Mrs Elizabeth Doherty, she had never lived in the mobile home. Mrs Doherty had lived in the dwelling house at Acorn Cottage until 2012, when she moved to live with her son Alex on a caravan site known as The Bungalow, Watling Street, Hinckley.
8. The Council said Mr Doherty provided insufficient evidence to prove, on the balance of probability, that Mobile Home 1 had been occupied by Mr Doherty and his immediate family in breach of Condition 2 of 02/0184/1/PX for the requisite period. They pointed to a similar, earlier application, reference 20/1311/CLE. They noted that his occupation evidence for the current application and appeal was essentially the same as that made in respect of application 20/1311/CLE. A critical problem thus caused was that the evidence of occupation did not cover the period up to 24 January 2024, leaving a gap of some 2 to 3 years between the 2 applications.
9. The Council said they had, prior to determine the current application, afforded Mr Doherty the Applicant the opportunity to comment upon their evidence, but had received no response. Nor was there a response to Blaby Council Licensing and Council Tax billing records, (11 January 2024), that showed Acorn Cottage and the 6 plots around it listed as empty pitches. There were no Council Tax records for Mr. J. Doherty at either of the two addresses.

10. The current application and appeal seem to be, as suggested by the Council, mostly a rehearsal of the earlier failed 20/1311/CLE application but with an additional gap of some 3 years in any persuasive evidence of an ongoing unlawful use in breach of condition 2. In my view, it was not shown, on the balance of probabilities, that there had been a continuous residential use of mobile Home 1 at Acorn Park for residential purposes in breach of Condition 2 to planning permission No. 02/0184/1/PX for period of 10 years to 24 January 2024 and that the appeal should fail.

Conclusion

11. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made for the Retention and use of mobile home for residential purposes in breach of Condition 2 attached to planning permission No. 02/0184/1/PX at Mobile Home 1, Acorn Park, Hinckley Road, Sapcote, Hinckley, Leicestershire LE9 4LH was well founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

FORMAL DECISION

12. The appeal is dismissed.

John Whalley

INSPECTOR