
Appeal Decision

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 February 2026

Appeal Ref: APP/J1535/X/25/3368397

47 Roydon Lodge Chalet Estate, High Street, Roydon, Harlow, Essex CM19 5EF

- 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 Keys against the decision of Epping Forest District Council.
- The application ref EPF/0119/25, dated 16 January 2025, was refused by notice dated 19 March 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) ("the Act").
- The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is described as: "The client has been living on the land for over 10 years. The dwelling has been used as a C3 household for over 7 years. We have electricity bills / bank statement / council tax / water bills for this period. This has been lived in for 12 months of the year."

Summary of decision: The appeal is dismissed.

Applications for costs

1. Applications for costs were made by the appellant against Epping Forest District Council, and by Epping Forest District Council against the appellant. These applications are subject to separate decisions.

Preliminary Matters

2. At the Inquiry, the appellant stated that no change should be made to the description of the use for which a certificate is sought, as described in the application form and shown in the banner heading above. However, in legal submissions the appellant then advised that a certificate should be issued if a lawful use is demonstrated and that, if the facts and circumstances require it, the description should be modified from that described in the application¹.
3. At the Inquiry, all evidence was given under solemn affirmation.

Main Issue

4. The main issue is whether the Council's decision was well founded.

Reasons

5. The description of the use for which the appellant seeks a certificate refers to both use of the Land and use of the dwelling. The application form clarifies that the grounds on which the certificate is sought are that the use as a single dwelling house began more than four years before the date of the application, and that it should be granted as it has been used as a C3 dwellinghouse 12 months of the year for over 4 years.

¹ Panton & Farmer v SSETR & Vale of White Horse DC (1999) 78 P&CR 186

6. The appellant's case as presented at the Inquiry is twofold. Firstly, that the building was erected as a dwelling without planning permission more than 4 years ago and that the 4 year time limit of Section 171B(1) therefore applies.

7. Or secondly, that the building was built with planning permission, but its use as a permanent dwelling is in breach of planning control regardless of whether: (1) the breach amounts to the material change of use of the building to a single dwellinghouse; or (2) it is a breach of condition resulting in the change of use of the building to a single dwellinghouse. Such that in either case, the 4 year time limit under Section 171B(2) applies.

8. The Council refused to grant the application on the basis that the breach of planning control is a breach of condition, and that the relevant time period, under Section 171B(3), is 10 years not 4.

9. I also invited legal submissions from the parties on the implications were I to find in favour of the appellant on his principal position at the end of the Inquiry, and have taken these into account.

The legal framework

10. Section 191 of the Act relates to certificates of lawfulness of existing use or development. In summary, 191(a) makes provision for an application to ascertain whether any use of buildings or other land is lawful, 191(b) whether operations carried out are lawful, and 191(c) whether a failure to comply with any condition or limitation of a planning permission is lawful.

11. The appellant's case relates to 191(a), and 191(c) in the alternative. 191(b) may also be engaged, although it is the use, not the building, which is at issue. The parties agree that no enforcement or breach of condition notice is in force, and no case is made that the use did not involve development or require planning permission. In each case, the key issue is therefore whether the time for taking enforcement action has expired.

12. Section 171B of the Act sets out time limits within which any enforcement action must be taken. As the use occurred before 25 April 2024, transitional provisions apply². Where a breach of planning control consists of operations, 171B(1) provides that no enforcement action may be taken after a period of 4 years. 171B(2) that, where there has been a change of use of any building to use as a single dwelling house, no action may be taken after the end of the period of 4 years, beginning with the date of the breach. And 171B(3) that, in the case of any other breach of planning control, no action may be taken after the end of the period of 10 years beginning with the date of the breach.

13. The onus is on the appellant to demonstrate that the use is lawful on the balance of probabilities.

Historic use of the land

14. The Council's witness states that the Roydon Chalet Estate was originally developed in the 1940s for use over the summer months, and that the first recorded development on the appeal site was described as a 'weekend chalet' granted by

² Regulation 5 of the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024/452.

planning permission EW/EPR/09/52 subject to conditions. In a report to the Council's planning committee, it is described as 'Reconstruction of weekend chalet', alluding to an even earlier building and use.

15. However, the Council's witness stated in evidence that the planning permission itself, and other historic documentary evidence have not been found, and only the description of development can be seen in the records. In particular, the conditions of that permission are not before me and I cannot know, for example, whether those conditions allowed the reconstructed chalet to be used more widely than the pre-1952 weekend chalet. The only other evidence of historic use before me is a handful of photographs dated 2013/14 of the exterior of the chalet and the land laid to grass like a domestic garden.

16. Neither party have claimed that the pre-2014 chalet was anything other than a single dwelling, although no evidence was provided of the facilities it provided. The appellant puts store on the reported limitation in the description of development of the 1952 planning permission. However, without the planning permission itself or any of its associated documentation, and given that more than 70 years have passed without information as to how the land has been used, there can be very little certainty over the lawful use of the land prior to 2014. Only very limited weight can therefore be given to any such limitation in the lawful use at the time the 2014 planning application was made or the dwelling was erected.

The 2014 planning permission:

17. The appellant states he purchased the land in 2014 and applied for, and obtained, planning permission EPF/0186/14 ("the 2014 planning permission") for 'Demolition and replacement of existing log cabin'.

18. That permission was subject to conditions, of which condition 6 required details to be submitted and approved prior to commencement of development, and the Council Officer's proof confirms those details were submitted and approved. With the evidence before me, it therefore appears that the development was commenced lawfully.

19. Condition 4 stated, "The chalet hereby approved shall be used solely for recreational purposes during the months of April to October inclusive, and shall not be used at any time for permanent residential accommodation. During the months of November to March inclusive the chalet shall be used solely for the storage of domestic items and household effects." If this permission was implemented, then the use as a permanent dwelling for the appellant's family is in breach of this condition.

The building constructed:

20. The appellant and the Council each acknowledge that there are differences between the building approved by the 2014 planning permission and the building erected. Although at the Inquiry the appellant described the variations from the approved plans as only slightly different, and otherwise as the plans, the appellant's legal submissions are that they amount to a different development. The Council's witness considered the variations from the approved plans to be cosmetic, and that the development was that authorised by the 2014 planning permission, albeit in breach of conditions.

21. In 2015 the Council granted a non-material amendment (EPF/2845/15) to the 2014 planning permission. Considering those plans, the statement of common ground states

that, in terms of its footprint, floor plan and layout, the development was carried out in accordance with the planning permission, except in relation to windows and a small rear extension housing the boiler.

22. But the parties also agree that the completed development differs from the approved drawings in respect of the pitch and height of the roof, the number, position and design of windows and rooflights, the design of the timber for the porch overhang, and a small rear extension for utilities. In addition, at my site visit it appeared that the eastern overhang of the roof was longer than that shown on the approved plans, and large glazed panels had been incorporated into the raised roof at each end of the building.

23. Taken as a whole, as a matter of fact and degree, the building erected is therefore materially different from that approved by the 2014 planning permission. As the building constructed is not that for which the 2014 planning permission was granted, it is not a breach of condition, but was erected without planning permission.

Whether enforcement action may be taken:

24. The appellant was clear at the Inquiry that the building was constructed and used as a permanent dwelling for his family from the outset, and not for seasonal recreational use. The first use of the building was therefore as a permanent dwellinghouse, and the building has never been used for any other use. Consequently, no change of use of the building to use as a single dwelling house has occurred. Section 171B(2) of the Act therefore does not apply either in relation to a breach of condition or in relation to any other change of use to a single dwelling.

25. The application made for a certificate of lawfulness relates to use. Nevertheless, in seeking to demonstrate a lawful use, the appellant makes the case that the time limit for taking enforcement action against the erection of the building is 4 years under Section 171B(1). He did not state in evidence when the building was substantially complete but, in his proof of evidence and at the Inquiry, he claimed he had lived on the Land since October 2017 and moved into the building when it was in a state to be lived in.

26. The application was made on 16 January 2025 and the Council's Officer Report for the application included a Google Maps street view image showing the building as it was in January 2021. At that time, none of the exterior cladding had been installed on the building or the porch overhang supports, guttering and wiring for external lighting had not been completed, and the high level glazing at the western end of the building and soil vent pipe I saw at my site visit had not been installed. It has therefore not been demonstrated that the building had been substantially complete 4 years before the application for a certificate was made.

27. But even if the building was substantially complete before 16 January 2021, the judgements in *Mid Suffolk*³ and *Welwyn Hatfield*⁴ assist in relation to use. In each of those cases a building had been erected without planning permission and was immune from enforcement action having been erected more than 4 years beforehand. And in each case only one use of the building had occurred, and Section 75(3) of the Act (in which a planning permission shall be construed as including permission to use the building for the purpose for which it is designed) did not apply as no planning

³ *Mid-Suffolk DC v First Secretary of State and Lebbon* [2005] EWHC 2634

⁴ *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government* [2010] EWCA Civ 26, [2011] UKSC 15

permission had been granted for the use. The effect was that each building was immune from enforcement action but was without a lawful use.

28. There are obvious similarities with the case before me. The building was constructed without planning permission, it has been used for only one use from the outset, and Section 75(3) of the Act does not apply.

29. Use of the Land or building is therefore a matter for Section 171B(3) of the Act, which applies a 10 year period.

30. The appellant states he has lived in the building on the land for more than 7 years, since October 2017, although his supporting information in the form of bills, photographs and other documentary evidence, begins in 2019.

31. He also states that he and his wife purchased the land approximately 10-11 years ago and, at the Inquiry and in a brief statement in his proof of evidence, that he lived in a caravan on the land for 2-3 years until the new building became habitable. However, there is no corroborating evidence of any such use before me, no evidence of the actual dates of that occupation, and it is common ground that the appeal property has not been occupied continuously for a period exceeding 10 years. It has therefore not been demonstrated that, on the balance of probabilities, continuous permanent residential use of the Land occurred over a period of 10 years or more.

32. Residential use of the land as a dwellinghouse for permanent year round residential use can therefore only be lawful if it has been demonstrated that there has been no material change of use of the land, and that the use did not breach a condition or limitation of the last implemented planning permission which remains in force. The very limited information and lack of certainty relating to the former use of the Land, and the absence of any unambiguous record of what the 1952 planning permission granted and any conditions imposed on it, makes that task very difficult. On the balance of probabilities it has not been demonstrated.

33. Overall, on the balance of probabilities it has therefore not been evidenced that enforcement action could not have been taken on the date the application was made in respect of the use of the building or the land. Lawfulness of the use has therefore not been demonstrated.

Conclusion

34. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use described as, "The client has been living on the land for over 10 years. The dwelling has been used as a C3 household for over 7 years. We have electricity bills / bank statement / council tax / water bills for this period. This has been lived in for 12 months of the year.", was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Decision

35. The appeal is dismissed.

Peter White

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Bell of Counsel
Dean Keys - appellant

FOR THE LOCAL PLANNING AUTHORITY:

Noémi Byrd of Counsel
Yee Cheung – Senior Planning Officer

INQUIRY DOCUMENTS

1. Extract from the Encyclopedia of Planning Law and Practice (P75.01)
2. Report of the Court of Appeal judgement: Handoll and Suddick v. Warner Goodman and Streat (a firm) and others. December 9 1994