



Appeal Decision

Site visit made on 4 March 2026

by **AJ Steen BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 March 2026

Appeal Ref: APP/R3650/X/25/3361018

Lesslands Lodge, 26 Busbridge Lane, Godalming, Surrey GU7 1PU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Christopher Thomas against the decision of Waverley Borough Council.
- The application ref WA/2023/00970, dated 13 April 2023, was refused by notice dated 19 July 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is single storey outbuilding at the rear of the property which is being used as a recording and rehearsal studio.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. The Council object to the determination of this appeal and inclusion of additional evidence submitted with the appeal in relation to the use of the building. They refer to the judgement in *Bernard Wheatcroft Ltd v SSE & Harborough DC* [1982] JPL 37ⁱ. That related to the acceptance of amendments to plans on appeal against refusal of planning permission, which would now be under section 174 of the Act. However, this appeal relates to an application for an LDC and is made under section 195 of the Act.
2. Section 195(2)-(3) of the Act requires me to consider whether the Council's decision was well-founded. Whilst this indicates such appeals are limited to a review of the Council's decision, it is possible for parties to submit additional evidence that was not before the Council when it made its decision. This is because it refers to whether the refusal is well-founded, i.e. the Council's decision, not the reasons for the decision. The application being appealed is made to ascertain what is lawful. If the evidence taken as a whole suggests that the matter in question is not lawful, it would be wrong to grant an LDC, even if the Council had different reasons for reaching the same conclusion.
3. In the case of an application for an LDC under section 191(1)(a) of the Act it is necessary to demonstrate that no enforcement action may be taken in respect of the use. In this case, the appellant indicates that the time for enforcement action has expired. Under section 171B of the Act as it applied at the date of application, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach subject of this appeal. That period would have needed to end prior to the date of the application if an LDC is to be issued.

Main Issue

4. The main issue in an appeal against refusal of an LDC is whether the decision of the Council was well-founded. In this case, that relates to whether the use of the

building had continued for a period of 10 years beginning with the date of the breach prior to the date of the application, being 13 April 2023.

Reasons

5. In the case of an application for an LDC, the onus is on the appellant to demonstrate the lawfulness of the development. The test of the evidence is on the balance of probability.
6. My attention has been drawn to the case of *Gabbitas v SSE & Newham LBC* [1985] JPL 60 that sets out that the 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.
7. The description of the development indicates that the appellant considers the use of the outbuilding to have become separate from that of the dwellinghouse at Lesslands Lodge. They have sought to provide evidence to support that conclusion. I note that the Council did not consider the evidence submitted was sufficient to demonstrate the continued use of the outbuilding as a recording and rehearsal studio for a period in excess of 10 years.
8. It is possible that the use of the outbuilding has been closely related to occupancy of Lesslands Lodge as a dwellinghouse. Amongst other factors, that may depend on the level of activity taking place as a recording and rehearsing studio and the relationship of the occupiers of the studio with the occupants of the dwellinghouse.
9. The outbuilding subject of this appeal is located within the rear garden of Lesslands Lodge. It comprises a building with two rooms, a larger room accessed from the side of the building and a smaller room beyond. I understand that the smaller room has been used for music recording and rehearsal. Sound proof insulation has been installed into that smaller room to absorb noise from the instruments being played in order to avoid disturbance to neighbours.
10. The evidence submitted with the application comprised statutory declarations from the appellant and Nick Eaglesfield. The appellant states that the building was constructed in around 2008 and it has been continuously used as a music recording and rehearsal studio and video shoots for bands for publication on YouTube.
11. Nick Eaglesfield kept his drum kit set up for use in music rehearsals for about five years, practicing on many days while he played in three bands who also used the studio. It has been suggested that he may have played in the studio on occasions outside the period when he kept his drum kit there.
12. A statutory declaration has been submitted with the appeal from the guitarist in a band known as Hanshotfirst, who formed in 2010 and rehearsed on and off at the studio until 2020, including recording song demos.
13. I understand that the studio was run by Michael Thomas for a period of 10 years up to the date of submission of the LDC. In his statutory declaration, he states that the studio was kept equipped throughout the years and was not used for any purpose other than as a recording and rehearsal studio. He was responsible for purchasing and installing the insulation, although does not provide a date for having done so.

14. A neighbour at 84 Busbridge Lane has had live bands playing in his garden during his occupation of his home for over 30 years. He states that he is aware of the recording studio and knows some of the musicians that have used it.
15. I am unaware of the relationship between those who have signed the statutory declarations, in particular Michael Thomas, and the residential occupiers of Lesslands Lodge.
16. I accept that the evidence indicates that the building has been used as a recording and rehearsing studio. However, it is unclear when it was constructed. Whilst there is some evidence to indicate it continued for a period of 10 years prior to the application for an LDC, it is not possible to conclude when the use commenced. Consequently, the evidence is not sufficiently precise and unambiguous to know whether it continued for a period of 10 years beginning with the date of the breach prior to the application for an LDC. It is unclear how often it was used for this purpose during the period of use or whether that was continuous and the relationship between the use of the studio and occupation of the house.
17. For these reasons, taking account of the evidence provided and on the balance of probability, I consider that any use of the outbuilding, including as a recording and rehearsing studio, was ancillary or incidental to the use of Lesslands Lodge as a dwellinghouse. The evidence submitted is not sufficiently precise and unambiguous to conclude that it was a separate use.

Final Decision

18. The appeal is dismissed.

AJ Steen

INSPECTOR

ⁱ Confirmed in *Wessex Regional Health Authority v SSE* [1984], *Wadehurst Properties v SSE & Wyckham DC* [1990] and *Breckland DC v SSE and T. Hill* [1992].