



Appeal Decision

Site visit made on 27 March 2026

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2026

Appeal Ref: APP/P2114/X/25/3362819

**Land at Land Registry title IW31554 Swains Road, Bembridge, Isle of Wight
PO35 5XT**

- 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.
 - The appeal is made by Mr Timothy Montagu against the decision of Isle of Wight Council.
 - The application ref 24/01721/CLEUD, dated 12 November 2024, was refused by notice dated 21 January 2025.
 - The application was made under sections 191(1)(a) and (b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is use of the site for a self-contained dwelling with a residential curtilage on the Land Registry title IW31554, engineering works for the installation of mains services, and structures including a static caravan, gates and sheds.
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Decision

1. The appeal is dismissed.

Reasons

2. Section 191(2) of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) provides that uses or operations are lawful if (a) no enforcement action may 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. There is no enforcement notice in force, so only (a) is relevant in this case.
3. The onus is on the appellant to prove their case on the balance of probabilities. Whether or not the Council had unrealistically high expectations on the standard or type of evidence provided, if the appellant’s evidence is sufficiently precise and unambiguous, and there is no contradictory evidence, then a certificate of lawful use or development (“LDC”) can be issued.
4. The evidence indicates that the site, a well-kept, clearly defined parcel of land, was part of the garden of Swains House until ownership was severed in the 1970s. A separation in ownership from the house would not, in itself, have caused a material change of use of the land, so it would likely have remained in some sort of private, domestic garden use, albeit not related to a dwelling.
5. There may be similarities in the terms ‘domestic’ and ‘residential’, but however the use following separation in ownership is defined, the site was not in a use as a self-contained dwelling with residential curtilage at that time. Importantly, it has not been shown that a use as a self-contained dwelling – being the use applied for – is

not materially different to either its use as part of the garden of Swains House, or as a separate area of garden land. Given the increase in intensity of use that would likely result from use as a self-contained dwelling, and that people would independently reside on the land, it is more likely than not that it would be materially different to the previous use and so involve development within the meaning of S55 of the 1990 Act.

6. Thus, in the absence of a planning permission, for the use applied for to be lawful, it will be necessary for subsequent events to establish that it has persisted so that, at the date of the LDC application, it was too late to take enforcement action.
7. It appears that a caravan was brought onto the land in 1988. A Council officer recorded, by email of 23 April 2012, that the land was used for family barbecues and general relaxation and that the caravan had been used for purposes in connection with that use. Effectively, he said, family members camp out in the mobile home occasionally in the summer, but it was not used in a residential manner.
8. The officer's visit followed the replacement of the original caravan with another one. The appellant's 'caravan diary' suggests that this resulted in an upgrade in the facilities provided. Nevertheless, this change in caravan is of little consequence because neither caravan is said to be or have been a building. Thus, for this case, it will be the use of the land as a single planning unit, rather than the caravan itself, that is relevant.
9. Whether or not caravans should be described as 'dwellinghouses', both caravans appear to have provided all the facilities required for a day-to-day private existence. Indeed, the caravan diary and statutory declarations describe a pattern of use similar to what might be expected of a holiday home, whereby family members have visited and stayed at the site for intermittent periods of up to two-weeks. The caravans would have provided the necessary facilities to support that, which indicates a residential use of the site. This pattern of use has evidently occurred at the site for well over ten years.
10. However, the evidence suggests that any residential occupation of the site has not been continuous through any period since the site was severed from Swains House. While use and occupation may not be the same thing, occupation would appear to be a necessary component of the use of a site as a self-contained dwelling.
11. I understand that the appellant and his family have never had any intention of ceasing the use of the caravan or land for the purposes they were putting it to. Unlike in *London Borough of Islington v SSHCLG and Maxwell Estates* [2019] EWHC 2691 (Admin), a caravan has always remained available to facilitate such a use. However, the case of *Swale v SoS and Lee* [2005] EWCA Civ 1568, as judged in the Court of Appeal, indicates that while breaks could be tolerated, or intentions may be relevant in an already established use, such a use has to be affirmatively established, not merely at the start but over the whole period in order to become lawful.
12. In the present case, the evidence does not show that the residential use was affirmatively established. Rather, while some years may have had a greater intensity of use and there was never any intention to stop using the site, there were times when the site was used for a residential purpose, and times when it

was not. Even if it is not necessary for somebody to have been resident at the site for every day of the relevant period to ensure continuity, I note that this is not a situation where there were momentary interruptions in the use such as where the users went away on trips. Rather, they came to the site occasionally, and it was otherwise not in a residential dwelling use.

13. Two possible scenarios appear to arise from this: Either the intermittent nature is such that there has been no material change of use of the land at all from its previous use, or, when it was not in use for residential living accommodation, there was no breach of planning control such that the Council could have taken action against it. Either way, those scenarios do not demonstrate that the site has been used as a self-contained dwelling with a residential curtilage for any continuous period up to the date of the LDC application.
14. For the avoidance of doubt, I am not finding here that the use that has gone on would not have resulted in a material change of use of the land, or be a breach of planning control. Nor am I finding that it would. Indeed, if there has been no material change of use, then enforcement action would not be possible and the Council might be able to issue a clearly defined certificate stating the same. However, through their application and appeal, the appellant clarifies that they are seeking certainty over their ability to use the land and caravan throughout the year as a dwelling. The evidence does not demonstrate that this is the way that the site has been used.
15. The LDC application also sought a certificate in respect of operations relating to mains services, and structures including a static caravan, gates and sheds. The caravan is not a building, rather it is part and parcel of the use of the land, so I am unable to issue an LDC stating that it is a lawful structure. There appear to have been services, gates and sheds on the site for some time. While buildings that appear to be the sheds are shown on the location plan, the application does not precisely describe or identify on a plan where all of the items referred to are, or which aspects an LDC would relate to.
16. I, therefore, conclude that the Council's refusal to grant a certificate of lawful use or development for the use of the site for a self-contained dwelling with a residential curtilage, engineering works for the installation of mains services, and structures including a static caravan, gates and sheds is well-founded.
17. Accordingly, the appeal is dismissed.

M Bale

INSPECTOR