



Appeal Decision

Site visit made on 7 April 2026

by **T C King BA(Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2026

Appeal Ref: APP/G2245/X/24/3349448

Westward Ho Bower Lane, Knatts Valley, Sevenoaks, Kent TN15 6XT

- 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 M Kite against the decision of Sevenoaks District Council.
 - The application ref 24/00338/LDCEX, dated 11 February 2024, was refused by notice dated 22 May 2024.
 - The application was made under section 191(1)(a) and 191(1)(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 are the stationing of a caravan/mobile home unit for residential use in connection with main dwelling, and the construction of a decking area adjacent to the caravan/mobile home
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Decision

1. The appeal is allowed, and attached to this decision is a certificate of lawful use or development describing the existing use and development which are considered to be lawful.

Application for Costs

2. An application for costs has been made by Mr M Kite against Sevenoaks District Council. This application is the subject of a separate decision.

The Legal Background

3. In an appeal under s195 of the Act, against the refusal of a LDC, the burden of proof is upon the appellant who will need to demonstrate immunity from planning enforcement action on the balance of probability. Accordingly, the key is that the evidence should be precise and unambiguous to this end.
4. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on evidential fact, planning legislation and relevant case law.

Main Issue

5. The main issue in this appeal is whether, on the balance of probability, the use and development were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

6. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action

has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

7. The application for a LDC is dated 11 February 2024 and, as such, the ten year immunity bar applies for any material change in the use of the land. Accordingly, the appellant's case has to demonstrate that a caravan mobile home was situated on the land, and in use for habitable purposes since, at least, 11 February 2014. Alternatively, it would need to be demonstrated that no planning permission was required for the use as it stands.
8. In this particular instance both the appellant and his wife have provided signed declarations relating to the site's history. It is said that the land was purchased in June 2012, with the aim of demolishing the then existing dwellinghouse and securing planning permission for a replacement dwelling. As an interim measure, a caravan/mobile home was brought on to the site in September 2012, and positioned adjacent to the dwelling.
9. The family lived in the mobile home, and planning permission was granted for the erection of a new dwelling in September 2013. Construction then commenced and the permission was implemented, with the dwelling completed by August 2015. The family then took up occupation.
10. In February 2017 the original mobile home was removed and replaced by a new one which comprised two caravans bolted together. It is positioned towards the rear of the site, beyond the dwelling's lawned garden. As is the case with the dwelling, both vehicular and pedestrian access to the mobile home is gained directly from Bower Lane. Access to the rear is then via a hardstanding driveway which is laid to the side of the said garden
11. Positioning the new mobile home involved the clearance of a number of trees and associated vegetation which forms part of the land under the owner's control. This would not necessarily be considered residential curtilage associated with the dwellinghouse, but I turn now to this matter which is one of the two main issues which I consider are for consideration here.
12. By way of case law, residential curtilage has been defined as an area of land with an intimate relationship with the dwellinghouse to which it is associated. In identifying residential curtilage it was acknowledged in the Court of Appeal judgement relating to the case of *Attorney General ex rel Sutcliffe and Hughes v Calderdale Council* [1983] that there are three factors to be taken into account; namely, the physical layout of the building and attached land, along with ownership and use or function (both past and present). The latter involves the relationship between the main dwelling and the land in question, but this is not determinative in itself.
13. In his representations, the appellant refers to the High Court judgement of *Burford v SOS & Anor* [2017] EWHC 1493 (Admin). This case reconfirmed the legal test for determining the curtilage of a dwellinghouse, with the court clarifying that lawful 'residential' use of adjoining land, though incidental to the enjoyment of a dwellinghouse, may not alone determine that such adjoining land is part of its curtilage.
14. The judgement held that the curtilage of a building, within the context of the assessment of the said three factors, is a matter of fact and degree for determination by the decision maker who must decide what reasonable weight should be given to

each factor. The case also demonstrates that the way land is managed, particularly by way of fencing and hedges, will be an important factor affecting whether land for residential use also forms part of the curtilage of the associated dwellinghouse.

15. What might be considered as curtilage is not, though, cast in stone, and it can change over time. In the current case I am of the view that the piece of land upon which the mobile home is placed took on a functional role when the land was cleared to facilitate this, and then upon occupation taking place in February 2017. There is no evidence before me to suggest that the land, prior to this, performed any role consistent with the wider residential use and it could not then have been reasonably considered as residential curtilage or, roughly, direct garden. However, I noted from my site visit that the rear garden is bounded by only low level pole and wire fencing which, it was explained, is to contain the family's pet dog. Immediately beyond this to the rear is an additional grassed area which then gives way to the hardstanding that runs to the side of the mobile home.
16. Whilst, therefore, although there is some degree of demarcation, the fencing has a certain openness and the visual impression given is that the piece of land which the mobile home sits on is separate to, but is not so unconnected from, the residential garden as to fall outside that which can be considered as the main dwelling's enlarged residential curtilage. Things have clearly evolved over time and, although any 'intimate' relationship to the main dwelling is somewhat limited, there is an obvious connection to the area of land in question, to which I attach significant weight.
17. The next issue relates to the mobile home itself whereby a mobile home can be brought on to a rear garden for use as ancillary accommodation, or additional living space, but not as a separate independent home. In this regard there are three tests which reasonably need to be satisfied. Firstly, in terms of its use, the structure should be used in conjunction with the main house by a family member(s), and there should be a significant degree of interaction between the two units of habitable accommodation. Accordingly, the mobile home cannot be used as an independent, self-contained, residence as this will likely then involve the creation of an additional planning unit.
18. Here, the appellant says that the mobile home has been used as an annexe in connection with the main house and that it has been used by various family members, relatives and friends for varying lengths of stay. The Council says that the appellant has not demonstrated that the mobile home has been used as such. However, given the description of the existing use, or the wording of the LDC applied for, I consider the issue is whether the mobile home has been used as a residence independent of the appellant's family home, Westward Ho. If so, then a material change of use will have occurred, and this would either require planning permission or proof of immunity from planning control.
19. The second test relates to its location which, as already discussed, requires that the mobile home be sited within what can be reasonably considered as the curtilage of the main dwellinghouse. If placed outside such an identified area then it is likely that the benefit of planning permission will be required for the development. I am satisfied in this instance that this is not the case. Finally, the mobile home must meet the legal definition of a caravan and, from the evidence before me, I accept that it is the case.
20. To expound, even if this mobile home is a self-contained unit so long as it is used as an extension of Westward Ho's living accommodation, and thereby in connection with

the main dwelling or with some significant interaction thereto, this would not, in itself, amount to a material change in the use of the land provided that the mobile home sits on land which can be considered as residential curtilage. In such circumstances the appellant would not have to prove immunity from planning control by way of the passage of time, as no additional planning unit would have been created and no breach would have thereby occurred in planning terms.

21. As mentioned, should the mobile home be used as an independent residential unit, unrelated to the occupation of the Westward Ho dwellinghouse, and where a visible physical severance might or might not take place, it would amount to an unauthorised material change of use which would allow for the Council to reassess the planning position. Accordingly, the Council holds remedial powers in such circumstances.
22. As regards the decking that has been constructed immediately outside and adjacent to the mobile home, a photograph dated 18 August 2017 shows the abutting timber structure virtually completed. On the balance of probability, therefore, I have concluded that the decking had been completed before 11 February 2020, or four years before the LDC application was submitted.
23. My overall conclusion is that the appellant has discharged the burden of proof and, for the reasons given above, based on the evidence available, the use of the land, as the appellant has described, and the operational development - both the subject of the application made – are, respectively, not subject to planning control, and is immune from enforcement action.
24. For the reasons given above I conclude, on the evidence available, that, on the balance of probability, the use and development was lawful on 11 February 2024, within the meaning of section 191(2) of the 1990 Act, as amended.
25. Accordingly, I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR



Lawful Development Certificate

APPEAL REF. APP/G2245/X/24/3349448

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 February 2024 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown edged in red on the plan attached to this certificate was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The use did not involve development or require planning permission as it is considered incidental to the enjoyment of the dwellinghouse whilst, for the operational development which has taken place, the time for enforcement action had expired.

Timothy C King
INSPECTOR

Date: **30 April 2026**

26. First Schedule

The stationing of a caravan/mobile home unit for residential use in connection with the main dwelling, and the construction of a decking area adjacent to the caravan/mobile home.

27. Second Schedule

Westward Ho, Bower Lane, Knatts Valley, Sevenoaks, Kent TN15 6XT

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the certified date and, thus, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. This certificate applies only to the extent of the use and development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or development which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan attached to the Lawful Development Certificate dated: **30 April 2026**

by Timothy C King BA (Hons) MRTPI

**Westward Ho, Bower Lane, Knatts Valley,
Sevenoaks, Kent TN15 6XT**

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Scale: Do not scale

