



Appeal Decision

Site visit made on 2 June 2026

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09th June 2026

Appeal Ref: APP/D3125/X/25/3376663

Little Willow, Oxford Road, Eynsham, WITNEY, OX29 4BT

- 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 development (LDC).
- The appeal is made by Mr Martin Maughan against the decision of West Oxfordshire District Council.
- The application ref 25/00563/CLE, dated 17 March 2025, was refused by notice dated 13 May 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) (the Act).
- The development for which a certificate of lawful development is sought is an engineering operation to raise the level of the land from 59.5m to 61.3m to provide an area of hardstanding.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is made to ascertain whether the development on the land is lawful as described in s191(2) of the Act. This provides that '...uses and operations are lawful at any time if - (a) no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force'.
3. The relevant date for the purposes of assessing an application made under s191(2) is the date of the application as set out under s191(5). In this case the relevant date was 17 March 2025.
4. The burden of proof in satisfying s191(1)(b) falls to the appellant to establish that the works to raise the land levels and form a hardstanding were substantially completed within the time limits set out in s171B of the Act and in accordance with the terms specified in s191(2). The appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not.
5. For the avoidance of doubt, this decision considers only the matters referred to in the description in the LDC application. It is not concerned with and does not consider or prejudice any further consideration of any use of the development or the land on which it is located.
6. For the purposes of determining this appeal, an unaccompanied site visit was undertaken from the public highway from where the area of raised ground subject of the LDC application was clearly visible.

Background

7. There is no dispute between the main parties that the works to increase the level of the subject land and form the raised hardstanding were probably complete by the end of 2020. On 21 April 2021, an enforcement notice (ref.2021/3 (EN1)) was issued by the Council. The notice alleged 'Without planning permission, the laying of hardstanding and raising of ground levels'. The notice identified land immediately to the southeast of other land now under the appellant's control which benefits from planning permissions for the siting of caravans for residential occupation by people meeting the Government's definition of Gypsies and Travellers. The EN1 area covers that subject of the LDC application.
8. Following dialogue between the former site owner and the Council, EN1 was subsequently withdrawn on 21 May 2021.
9. A second enforcement notice (ref. 2025/2 (EN2)) was issued on 4 April 2025. This included both the current appeal site and the wider area used for the siting of the residential caravans. The notice alleged (i) the carrying out of a material change of use of the land edged blue (that southeast of the land benefitting from planning permissions for the siting of residential caravans) from agricultural use to use for the stationing of caravans for residential purposes; (ii) the carrying out of operations on the blue land to raise land levels, the erection of a retaining structure and creation of an area of hardstanding on the blue land; and, (iii) the erection of timber fencing on the raised area within the blue land.
10. Appeals were lodged against EN2 (the 2025 appeals). The Inspector in those appeals amended the enforcement notice culminating in the removal of allegations (i) and (iii), leaving only the matter of the raised land levels and the hardstanding. The appeals against EN2 were subsequently dismissed.

Main Issue

11. The main issue is whether the Council's decision to refuse the LDC is well founded.

Reasons

12. The date of the LDC application, made on 17 March 2025, fell after the withdrawal of EN1 but before the issue of EN2 such that, for the purposes of s191(2)(b), it could not be said to constitute a contravention of any of the requirements of any enforcement notice then in force.
13. The appellant asserts that because at the date of the application EN2 had not been served, the former s171B(1) 4-year¹ time limit had expired. However, the saving provision in s171B(4)(b) is that s171B does not prevent taking enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach (commonly referred to as the 'second-bite' provision).
14. The appellant's evidence challenges the legal status of EN1. It is contended that because it was withdrawn prior to becoming effective, it had no legal standing. It is asserted that EN1 should be treated as if it were never served and was, in effect,

¹ For operational development substantially completed before 25 April 2024, the amendment of s171B(1) by the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 extending the time limits for enforcement action from 4 years to 10 years does not apply. The relevant period is 4-years on, or prior to, the relevant date.

cancelled such that it was no longer ‘enforcement action’ and should have been deleted from the site planning record. However, such an approach would give little meaning to s173A which provides for the withdrawal of notices whether it has come into effect or not. While a null notice is not an enforcement notice in law, section 173A(4) is clear that the withdrawal of an enforcement notice does not affect the power of the local planning authority to issue a further notice.

15. Furthermore, any ongoing status of an enforcement notice is distinct from whether or not the Council took, or had purported to have taken, enforcement action. Regardless of whether a notice is withdrawn, corrected or quashed, the act of issuing an enforcement notice is a serious matter with potential for severe ramifications if not ultimately complied with. To my mind, in each instance an enforcement is issued, there can be little doubt that a Council had actually or purported to have taken enforcement action. The initial enforcement action was taken on 21 April 2021.
16. The provision of s171B(4) was considered in detail in the 2025 appeal decisions. It highlighted that from fair reading of EN1 and EN2 they are concerned with the same development. The 2025 appeals found that the itemisation of three breaches, while related, were separate and distinct. It found that EN1 had been properly authorised and was served before any time limits for enforcement action had expired.
17. In those appeals, the appellants contended that the wider substance of EN2 prevented the application of s171B(4). However, after correction of EN2, that Inspector found that both notices related to the same works on the ground and that the physical reality of the breach is the same. It was concluded that additional reference to retaining structures in EN2 was not material and did not widen the scope of the second notice. The Inspector found no reason to discount EN2 as a legitimate ‘second-bite’ notice after the purported action of EN1. Furthermore, it was concluded that the timing of that within 4-years of the date of issue of EN1 caused the provision in s171B(4) to engage.
18. I do not have the benefit of the full evidence or the Inspector’s notes from the 2025 Inquiry. Notwithstanding, there is little before me to give reason to depart from that Inspector’s findings, or to seek to relitigate a decision that was not challenged.
19. Critically for the appellant, the LDC application made on 17 March 2025 was less than four years after the issue of EN1 and therefore before the expiry of the ‘second-bite’ period. Section 191(2)(a) cannot be satisfied because it remained open to the Council to take further action such that the time for enforcement had not expired. As above, the immunity periods set out in s171B(1)-(3) do not prevent the issuing of another enforcement notice within four years.
20. For completeness, even if it could be found correct to issue an LDC for the development as described, or if one had been granted on the date of the application, that would not assist the appellant. It would have little practical effect since EN2 has subsequently been served and upheld, and it requires the removal of the works. In the absence of challenge to the EN2 appeal decision, s285(1) ensures that Notice retains full legal effect.

Conclusion

21. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for an engineering operation to raise the level of the land from 59.5m to 61.3m to provide an area of hardstanding is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

R Hitchcock

INSPECTOR