Planning Inspectorate

Appeal Decision

Site visit made on 18 June 2026

by T C King BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2026

Appeal Ref: APP/U1430/X/24/3352368
The Barn, Woodmans Rest, Bluemans Lane, Westfield, TN33 0SE

- 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 & Mrs Danny Hill against the decision of Rother District Council.
- The application ref R/2024/720/O, dated 23 April 2024, was refused by notice dated 30 August 2024.
- The application was made under section 191(1)(a) 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 building as an independent dwellinghouse for a continuous period exceeding 4 years.'*

Decision

1. The appeal is allowed.

Preliminary Matters

2. 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.

3. 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.

4. No enforcement action may be taken under s171B(2)(a) where there has been a breach of planning control consisting in the change of use of any building for use as a single dwellinghouse. By way of the Levelling Up and Regeneration Act 2023 no such formal action may be taken after the end of the period of ten years beginning on the date of the breach where that took place on or after 25 April 2024. However, with its transitional provisions, that period remains at four years where the date of the breach was before 25 April 2024. This appeal is a case in point.

5. In this particular case the LDC application is dated 23 April 2024 and, therefore, the appellant must prove, on the balance of probability, that the dwelling unit has been lived in continuously – or without any significant breaks - since at least 23 April 2020. This is the material date.

6. 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 effect.

7. I shall now outline the facts of the matter, as put forward by both main parties, and assess the evidence provided in this regard.

Background

8. Nether parties dispute that, following planning permission (ref RR/2003/1438/P) being granted in 2003 for the erection of a barn for use as a hay and machinery store, the development was subsequently implemented, but to a larger footprint, with an increased length of some 3.75m. At the time the application the subject of this appeal was made the Council originally thought the increased length to be some 7m, although it subsequently accepted that not to be the case. Nonetheless, it is obvious from the evidence that the Council was unaware of any breach but, due to the passage of time, the building, despite being larger than shown on the approved drawings, is now immune from planning control.

9. In support of the appeal a Statutory Declaration (SD) has been produced from the previous owners of the land, Charles and Teresa Maplesden, saying that they purchased land at Buckhurst Cottage, Bluemans Lane in 2002 and became the registered proprietors of the wider area of land for which an application was drawn up proposing the erection of a barn, the part use of which is the subject of the current appeal.

10. The approved barn building was erected for the purposes of a tree surgery business run by the Maplesdens, and used for associated storage. However, the appellant says that, in approximately 2014, an area of the barn to its western end was sectioned off and, taking advantage of its two-storey height, a self-contained dwelling unit was created within the barn's envelope. A series of windows were installed, mainly in the end wall, and the internal layout was formed creating two bedrooms and bathroom facilities on the ground floor and the main living area and kitchen at first floor level. There is an external doorway to the unit, along with a door installed between to allow internal access to the main part of the barn.

Main Issue

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

Reasons

12. The judgement in *Gravesham BC v SSE & O'Brien* [1982] sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence. That is the case here and I understand that the dwelling unit within the barn envelope has been rated independently and liable for Council tax purposes since 31 December 2016. Documentary evidence submitted from the government's Valuation Office Agency confirms as such.

13. A building is liable for Council Tax only if it has been fitted out to function as independent living space, with its own sleeping, cooking and sanitation facilities; in other words being capable of use as separate and self-contained living accommodation. In essence, therefore, a building will become a single dwellinghouse where it is self-contained with all the necessary living facilities, as per the Gravesham judgement, and has resulted in the creation of a separate

planning unit. The unit's rating is a matter for the relevant Council department and it has no direct implications for the actual planning position.

14. Nonetheless, in support of his case the appellant has submitted the first Council tax bill from 2016 relating to the dwelling unit, along with all subsequent yearly bills up to 2025.

15. In their SD Mr and Mrs Maplesden state that: from at least 2016, *'….the Barn has been occupied and lived in either by us or someone authorised by us continuously since and during that time'.* They indicate that Buckhurst Cottage was sold in September 2021 to the appellant and his wife (Daniel Hill and Fiona Cornford), with the remainder of the land, which included The Barn, being sold to them in July 2023.

16. Mr Hill and Ms Cornford have also produced a SD, within which they claim to have lived in The Barn from July 2023 until at least September 2024 – the date when their SD was signed. I understand that this was a temporary arrangement until Buckhurst Cottage, the main dwelling at the site, which has been undergoing renovation, is completed. As my site visit I walked around the dwelling the subject of the current appeal and noticed that it was still occupied or, at least, available for occupation.

17. A solicitor who acted for the appellant in 2021 when the latter was purchasing Buckhurst Cottage, has provided a SD to explain the purchase and the subdivision of the wider site, and he confirms that the said purchase was completed on 28 September 2021. He confirms that the purchase of Woodmans Rest was completed in July 2023.

18. The appellant has produced a series of electricity bills to show occupation of the dwelling unit prior to his family taking occupation and, subsequently, to show his tenure. Although Mr and Mrs Maplesden claim to have taken occupation in 2016, the first such bill provided is only dated June 2020, and takes in the period 21 March 2020 to 25 June 2020. It may be that this is because only those bills which relate to the relevant four year period were considered directly relevant, and that those prior to this were not necessary. Nonetheless, given that I have shown the material date to be 23 April 2020 the stated supply period commenced nearly five weeks prior to this date.

19. The first electricity bill addressed to the appellant has been provided, and this is dated 18 September 2023, some two months after the purchase took place. This apparent break in occupation is insufficient to reasonably constitute a break in tenure which would affect continuity of use.

20. A photograph dated 12 September 2020 shows the rear wall of the dwelling, in front of which is a washing line and also a garden table and chairs. The windows installed in this end of the barn building at both ground and first floor levels, which I witnessed at the time of my site visit, where clearly in place some six years ago.

21. As regards additional evidence, an SD has been produced by Billie-Joe Warnes, who claims to be a plasterer by trade and says that, in 2016, he carried out work at The Barn. Thomas Gibbons, in his SD, says that, in 2019, he attended to a leaking roof at The Barn, which he recalls was then occupied by Mr And Mrs Maplesden.

22. Sky TV bills, dating from 2020 and 2021, and addressed to the Mapelesdens at The Barn have been provided. Also, a letter from 'Biffa', dated 8 February 2024, confirms that, since 2016, the firm has been collecting domestic refuse along with that to be recycled from the front gate of the wider site, known as Woodman's Rest. The letter, though, specifically mentions 'The Barn' as opposed to a general collection relating to the other accommodation on the wider site.

23. I acknowledge the Council has raised certain concerns that the evidence is, in parts, inconsistent and incomplete in its attempt to show continuous occupation throughout the relevant period. That said, it is often difficult to get fully consistent accounts where different people's recollections are required, and a picture has to be constructed as to previous events along with the necessary accompanying details.

24. In this particular instance the Council is seemingly unable to convincingly rebut the detailed evidence produced by the appellant and, on the basis of the court judgement in *FW Gabbitas v SSE and Newham LBC* [1985] JPL 630 – thereafter known as the Gabbitas principle - I am satisfied that the legal requirements for the requested LDC to be issued has been met. Accordingly, I find the evidence to be reasonably precise and unambiguous to this end.

25. On a different point the Council has objected to the appellant submitting evidence alongside the appeal additional to that submitted at the application stage. The Council says that the appeal process is not intended for the development of a scheme. This is correct, with 'scheme' being the operative word. This primarily relates to s78 appeals and the consideration of proposals for development, where the appeal process should not be used to evolve a scheme beyond clarification, where necessary.

26. In contrast, as I have mentioned, s195 appeals relating to the lawfulness of existing uses and development are concerned primarily with evidential fact. Accordingly, it is often the case that new evidence may come to light during the appeal process and, if so, its relevance to the application made should be considered rather than ignored, as the appeal might turn on such.

27. For the reasons given above I conclude, from the evidence available, that, on the balance of probability, the use of the dwelling within the barn's envelope, as a single dwelling, was lawful on 23 April 2024, within the meaning of section 191(2) of the Town and Country Planning Act 1990.

28. Accordingly, I will exercise my powers under section 195(2) of the 1990 Act, as amended.

T C King

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

APPEAL REF. APP/U1430/X/24/3352368

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 23 April 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 time period for enforcement had expired and the use did not contravene any of the requirements of any enforcement notice then in force.

Timothy C King

INSPECTOR

Date: **21 August 2026**

First Schedule

'Existing use of building as an independent dwellinghouse for a continuous period exceeding 4 years.'

Second Schedule

The Barn, Woodmans Rest, Bluemans Lane, Westfield, TN33 0SE

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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: **21 August 2026**

by Timothy C King BA (Hons) MRTPI

The Barn, Woodman's Rest, Bluemans Lane, Westfield

TN33 0SE

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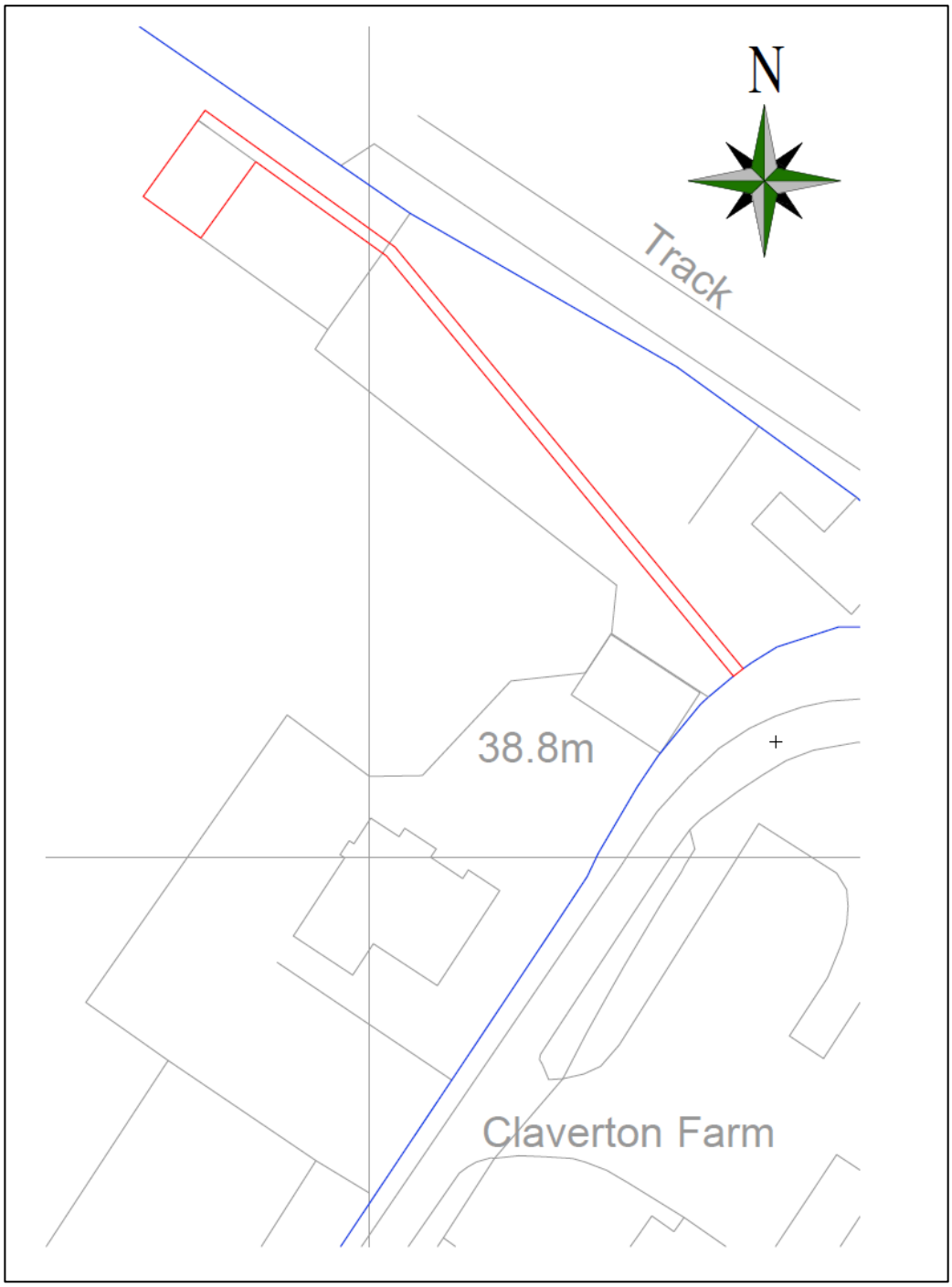

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