



Appeal Decision

Site visit made on 1 October 2026

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2026

Appeal Ref: APP/V2255/X/25/3363186

Beckenham Park, Otterham Quay Lane, Upchurch, Kent ME8 7XF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr John Preston (Wyldecrest Parks Management Limited) against Swale Borough Council.
 - The application ref 24/504654/LDCEX is dated 21 January 2025.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 (as amended).
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is 'the use of the site is a Caravan Site. That is because condition (ii) of planning permission SW/79/0432 was breached and has thus not been complied with for over ten years, but the passage of time now gives it an immunity; condition (i) was complied with'.
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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 matter constituting a failure to comply with a condition or limitation which is found to be lawful.

Preliminary Matters

2. Section 191(2) of the Town and Country Planning Act 1990 states that for the purposes of this Act, uses and operations are lawful at any time if (a) no enforcement action may then 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.
3. Section 171B(3) provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. It is therefore necessary to identify precisely the matter constituting the alleged breach to which that ten-year period is said to apply.
4. I have had regard to the correspondence between the Council and the appellant concerning the description of the matter for which the LDC was sought. The description used by the Council when validating the application does not reflect the matter described in the amended application form, nor does the evidence demonstrate that it was agreed by the appellant. I have therefore determined the appeal based on the description set out in the amended application form.

Main Issue

5. The wording of the matter for which the LDC is sought is somewhat cumbersome. In essence, however, it seeks to establish whether the use of the site as a caravan site, in breach of condition (ii) of planning permission SW/79/0432, has become lawful through the passage of time.

Reasons

6. The onus is on the appellant to demonstrate, on the balance of probabilities, that planning permission SW/79/0432 was implemented without the requirements of condition (ii) having been complied with, and that the period for taking enforcement action against that breach had expired before 21 January 2025.

Whether planning permission SW/79/0432 was implemented

7. It is common ground that the site has been used as a caravan site, a position supported by the submitted aerial photography. The Council confirms that the lawful use of the site is as a caravan site for the siting of up to 75 caravans. However, use of the site as a caravan site does not establish that planning permission SW/79/0432, dated 3 March 1980, for the change of use of land to an extension of the existing permanent residential mobile home site was implemented. It is therefore necessary to consider whether that permission was implemented within the prescribed five-year period (condition (i)).
8. The later permissions for garages and a site office (SW/82/0515) and gas storage tanks for a piped supply to mobile homes (SW/82/0591) do not, in themselves, establish that permission SW/79/0432 was implemented. However, the plan associated with application SW/82/0515, dated 14 June 1982, has been provided and depicts the circulation roads and caravans in positions corresponding with plots 1–13 within the extension area shown on the approved plan for SW/79/0432. That, coupled with the copy of a plan received by the Council on 19 November 1982 entitled ‘Tree Planting and Landscaping Proposals’, provide positive evidence that matters were well in hand to implement the planning permission within the prescribed period. Given the undisputed longstanding use of the site as a caravan site, the available planning history, and lack of evidence to the contrary, I find it more likely than not that planning permission SW/79/0432 was implemented within the prescribed period.

The tree planting and landscaping scheme

9. Condition (ii) of planning permission SW/79/0432 required a scheme of tree planting and landscaping to be submitted to and approved by the Council before any works began. It also required the approved scheme to be carried out within 12 months of completion of the development. The appellant’s evidence is that, although a landscaping scheme was submitted, there is no record that it was approved or subsequently implemented. The Council has not produced evidence of any such approval or implementation, although it does not expressly accept that condition (ii) was not complied with.
10. The documents before me include a plan received by the Council on 19 November 1982 entitled ‘Tree Planting and Landscaping Proposals’. This indicates that a scheme was submitted, but neither party has provided evidence that it was approved by the Council or subsequently implemented in accordance with

condition (ii). In addition, the proposed conifer hedgerow and tree planting identified on the 1982 plan are not apparent in the January 1990 aerial photograph, which would support the case that the landscaping scheme was not implemented. I therefore find, on the balance of probabilities, that condition (ii) was not complied with.

11. While condition (ii) is in effect a pre-commencement condition, the reason for its imposition concerns mitigation and does not define the nature or extent of the planning permission. Furthermore, a failure to comply with this condition could have been addressed through enforcement action. I therefore find it does not go to the heart of the planning permission. Non-compliance with this condition does not render application SW/79/0432 unimplemented.

Other Matters

12. As condition (ii) was a pre-commencement condition, the breach occurred when the development began without the landscaping scheme having first been approved and it is not necessary to demonstrate a separate continuing failure to obtain approval throughout the ensuing period. Nevertheless, for that breach to be lawful under section 191(3), the time for taking enforcement action must have expired. As the development began within five years of 3 March 1980, the ten-year period under section 171B(3) had expired well before the date of the application.
13. The purpose of this certificate is to determine whether the permitted development has been carried out in breach of condition (ii). Its purpose is not to determine whether development has been carried out without planning permission. Furthermore, a lawful development certificate is not a planning permission and it cannot remove or discharge conditions imposed on planning permissions. In these circumstances, planning permission SW/79/0432 remains extant and condition (iii) restricting the number of caravans on the caravan site to 75 remains in effect.
14. The appellant refers to three decisions in which caravan-site uses were certified without a numerical limit, while the Council relies on *R (John Childs) v Secretary of State and Test Valley Borough Council* [2005] concerning whether caravan numbers may be integral to the use of land as a caravan site. Those decisions turn on their particular facts and, as I am not determining the lawful number of caravans in this appeal, they do not alter my conclusion.

Conclusion

15. Section 191(4) provides that a certificate must be issued where the information supplied satisfies the decision-maker of the lawfulness, at the date of the application, of the matter described in the application, or of that matter as modified or substituted. I am satisfied that the information provided demonstrates the lawfulness of the matter described in the application, subject to the following modification made in the interests of precision and clarity:
16. From:

'the use of the site is a Caravan Site. That is because condition (ii) of planning permission SW/79/0432 was breached and has thus not been complied with for over ten years, but the passage of time now gives it an immunity; condition (i) was complied with'

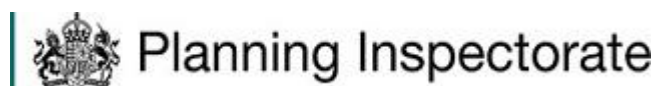
To:

'the use of the site as a caravan site in breach of condition (ii) of planning permission SW/79/0432'.

17. For the reasons given above, I conclude on the evidence now available that, had the Council refused to grant a certificate in respect of the use of the site as a caravan site in breach of condition (ii) of planning permission SW/79/0432, that refusal would not have been well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

V Goldberg

INSPECTOR



Lawful Development Certificate

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

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

IT IS HEREBY CERTIFIED that on 21 January 2025 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Condition (ii) of planning permission SW/79/0432 was a pre-commencement condition. The breach occurred when the development began without that condition being discharged and it is not necessary to demonstrate a separate continuing failure to obtain approval throughout the ensuing period. As the development began within five years of 3 March 1980, the ten-year period under section 171B(3) had expired well before the date of the application.

Signed

V Goldberg

Inspector

Date: 9 October 2026

Reference: APP/V2255/X/25/3363186

First Schedule

The use of the site as a caravan site in breach of condition (ii) of planning permission SW/79/0432.

Second Schedule

Beckenham Park, Otterham Quay Lane, Upchurch, Kent ME8 7XF

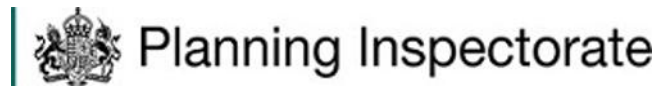
IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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 referred to in the Lawful Development Certificate dated: 9 October 2026

by V Goldberg

Land at: Beckenham Park, Otterham Quay Lane, Upchurch, Kent ME8 7XF

Reference: APP/V2255/X/25/3363186

Scale: Not to Scale

