Planning Inspectorate

Appeal Decision

Site visit made on 4 November 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2026

Appeal Ref: APP/G2245/X/25/3367459
Windy Cott, The Grove, West Kingsdown, Kent TN15 6JJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Thomas Moore against the decision of Sevenoaks District Council.
- The application ref 24/02063/LDCEX, dated 6 August 2024, was refused by notice dated 7 November 2024.
- The application was made under section 191(1) of the Act.
- The development for which an LDC is sought is the existing use of the land as a dwelling house, the installation of the existing rear elevation kitchen door and window, alterations made to drainage to disconnect old manhole and install new manholes and soil vent pipe, and the installation of the existing east elevation door, all carried out in accordance with planning permission SE/78/988 dated 11 October 1978.

Decision

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

Application for costs

2. An application for an award of costs has been made by Mr Thomas Moore against Sevenoaks District Council. That application forms the subject of a separate decision.

Preliminary Matters

3. The application form refers to section 191(1) of the Act, which relates to the lawfulness of existing uses/development and states an LDC is sought for an existing residential use and unspecified works. Overall, the submissions made and the manner in which the parties approached the application and appeal suggest that an LDC was intended to be sought under section 192(1) of the Act for the proposed carrying out of the development approved by planning permission reference SE/78/988 (the 1978 PP), on the basis that it is claimed the 1978 PP was lawfully implemented.

4. The appellant has since confirmed that they are seeking an LDC under section 191(1) of the Act for the existing use and development stated in the banner heading above, because these works are claimed to have been carried out in accordance with the 1978 PP. However, the LDC process under section 191(1) can only confirm whether any existing use/development was lawful on the date of the application for an LDC, not whether any specific planning permission remains capable of being lawfully completed.

5. If the appellant seeks formal confirmation that the development approved by the 1978 PP remains capable of being lawfully completed, it may be more appropriate to seek an LDC under section 192(1) of the Act for that proposed development. I will determine the appeal on the basis that an LDC is sought under section 191(1) of the Act for the use and development described in the banner heading, as confirmed by the appellant.

6. Section 191(4) of the Act provides that where information is provided to satisfy the local planning authority of the lawfulness at the time of the application for an LDC of the use, operations or other matters described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue an LDC to that effect. Therefore, an LDC can be issued for existing use/development which is shown to be lawful, even if that only forms part of the existing use/development claimed to be lawful.

Main Issue

7. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded.

Reasons

8. In cases such as this, case law[1] confirms that the onus is on the appellant to make out their case to the civil standard, or 'on the balance of probabilities'. Their evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict the appellant's version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

9. Planning permission was granted on 11 August 1975 for proposed development described as 'erection of a single-storey kitchen, bathroom and bedroom extension at rear' of the site[2] (the 1975 PP).

10. The 1978 PP was subsequently granted on 11 October 1978 for proposed development at the site described as 'alterations and extensions to existing bungalow to form two-storey house'.

11. In respect of when works may have commenced on any development approved by a planning permission, section 56 of the Act sets out that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Subsection (4) explains that a 'material operation' can include the laying of any underground main or pipe of a building, amongst other things. The appellant is therefore correct in stating that very little work is needed to implement a planning permission. If, in accordance with condition 1, a material operation comprised in the development authorised by the 1978 PP was carried out between 11 October 1978 and 11 October 1983, the permission would have been implemented and the remaining authorised development could, subject to the conditions of the permission, remain capable of lawful completion.

12. There is no dispute that the development approved by the 1975 PP has been carried out. I note that the footprint and form of the dwelling currently reflect those shown in the proposed plans approved by the 1975 PP. The position of 'new drains'

[1] *Gabbitas v SSE & Newham LBC* [1985] JPL 630
[2] The Council's ref: SE/75/655

marked on those plans also closely correlates with manholes currently in place. I note the appellant's claims that these plans show the rear manhole 1 metre (m) from the external wall of the dwelling, and that the 1978 PP proposed plans show the rear manhole 0.45 m from the external wall, as it is said to currently exist.

13. There are also differences between the window and door openings on the rear and east elevations shown on the 1975 PP plans compared to what currently exists. The 1975 PP plans show a window and door proposed on the rear elevation to serve a kitchen, with intervening brickwork between the proposed window and door. However, the rear elevation kitchen window and door which currently exist in that place are joined, with no intervening brickwork. On the east elevation, a door now occupies the position in which the 1975 PP plans show a dining-room window.

14. The 1978 PP plans include an existing floor plan and proposed floor plans and elevations. The 1978 PP existing floor plan shows a rear elevation kitchen window and door joined, as currently exists, and an east elevation window to the dining room. The 1978 PP proposed plans show the same rear elevation kitchen window and door combination and a door in place of the then existing dining room window. A soil vent pipe (SVP) on the rear elevation is also shown on the 1978 PP proposed plans, joined to manholes and drains consistent with those which currently exist.

15. The 1978 PP existing plan therefore shows that the rear elevation kitchen window and door arrangement which currently exists was in place when those plans were submitted on 26 June 1978. Their installation prior to the submission of the 1978 planning application cannot be taken as the implementation of the 1978 PP.

16. Alterations have evidently been made to the drains and manholes at some point, as an old drain inspection chamber remains in place and is no longer connected to the dwelling. Its position aligns with an inspection chamber and the run of drains shown in the 1975 PP plans to have channelled beneath the then proposed rear extension. The appellant has claimed that while it was the original intention to connect the single storey rear extension to the new drain shown in the 1975 PP plans, to save costs, the drains were connected to this old drain, which was later discarded. There is no evidence to support this claim, other than the undetailed statutory declaration (SD) of Russell David John Watts.

17. Mr Watts' SD simply states that he heard that the building's former owner was David Morgan, who lived there for a long time, and that he believes that during construction of the single storey rear extension connections were made to the existing drain to save costs. The SD goes on to state that Mr Watts heard that during construction of that extension, Mr Morgan received planning permission to alter the roof and make a larger house, so Mr Watts believes Mr Morgan started those works and changed the drains, but stopped. The SD does not state that Mr Watts carried out any works at the site or witnessed any such works being carried out, and does not clearly explain why he believes these claims to be true.

18. Even if I accept that the existing drains and inspection chambers occupy the positions shown on the proposed plans approved by the 1978 PP, the evidence, including Mr Watts' SD, provides very little indication of when they were installed. The site visit meeting notes dated 20 June 2024 and accompanying SDs of John

Kidd and the appellant also add little to support the appellant's case as they lack detail and are largely based on conjecture.

19. The SDs do not support the claim that alterations to the drains, including the installation of the manholes and rear SVP were carried out between 11 October 1978 and 11 October 1983. On the evidence, it is just as likely that those alterations were carried out before 11 October 1978 or after 11 October 1983. The appellant's claims that the alterations to the drains must have been carried out soon after the 1978 PP was issued and within 5 years because the occupier would have been without a toilet/bathroom are unsupported by evidence and amount to speculation. On the limited evidence, it is equally possible that the toilet and bathroom were served by either the old drain or the new drain shown on the 1975 PP plans, even if the latter no longer exists.

20. I therefore find that the evidence is not sufficiently precise and unambiguous to show, on the balance of probabilities, that the drainage alterations, including the installation of the manholes and rear elevation SVP shown on the 1978 PP proposed plans, were undertaken pursuant to the 1978 PP during the relevant period. The same can be said for the installation of the east elevation door. Although it is not shown on the 1978 PP existing floor plan, but is shown on the 1978 PP proposed plans, there is nothing to indicate whether it was installed between the relevant dates.

21. An LDC cannot therefore be issued on the basis that the development approved by the 1978 PP was lawfully begun within 5 years of the grant of that permission. However, having regard to section 171B of the Act as then in force and the relevant transitional provisions, operational development substantially completed before 25 April 2024 may be lawful by the passage of time if the applicable 4-year period had expired before that date. The 1978 PP existing plans provide a very strong indication that the rear elevation kitchen door and window arrangement has been in place since before the 1978 planning application was made. The evidence therefore shows, on the balance of probabilities, those works were lawful on the date of the application and an LDC should be granted in respect of them, as sought.

22. There is no dispute that the use of the site as a dwelling house is lawful. The evidence refers to the existing dwelling being extended in the 1970s and there is nothing to suggest the site has been in use for any other purpose since. I therefore see no reason why an LDC should not be issued confirming the site has a lawful use as a dwelling house, as also sought by the appellant.

23. The existing drainage arrangements and the east elevation door look old, but sufficiently precise and unambiguous evidence has not been provided to show, on the balance of probabilities, that they were installed at least 4 years before the application for an LDC. An LDC cannot therefore be issued in respect of this development.

24. Consistent with section 191(4) of the Act, the LDC which I shall issue will only confirm that the use of the site as a dwelling house and the rear elevation kitchen window and door were lawful on the date of the application for an LDC. This is part of what the appellant has confirmed they are seeking an LDC for. The LDC does not confirm that any works in accordance with the 1978 PP commenced within 5 years of the date of that planning permission, and the limited evidence provided

does not show that happened, on the balance of probabilities. It will be a matter for the appellant to consider whether further evidence can be submitted as part of another application for an LDC, possibly under section 192(1) of the Act, which is sufficiently precise and unambiguous to demonstrate that happened to the relevant standard.

Conclusion

25. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of the land as a dwelling house and the existing rear elevation kitchen door and window is not well founded. The appeal should succeed, and I will exercise the powers transferred to me under section 195(2) of the Act.

L Douglas

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 6 August 2024 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in thick black line on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence shows, on the balance of probabilities, that the land has been in continuous use as a dwelling house since at least the date of planning application reference SE/75/655 on 29 May 1975 and that the rear elevation kitchen door and window arrangement has been in place since at least the date of planning application reference SE/78/988 on 26 June 1978. This is because the dwelling house is referred to in planning application reference SE/75/655 and the rear elevation kitchen window and door are shown to be in place, in their current arrangement, in the existing floor plan submitted in respect of planning application reference SE/78/988. Under the provisions of sections 171B and 191 of the Town and Country Planning Act 1990 (as amended), these use and operations are lawful.

Signed

L Douglas

Inspector

Date: **23 November 2026**
Reference: APP/G2245/X/25/3367459

First Schedule

The existing use of the land as a dwelling house and the installation of the existing rear elevation kitchen door and window.

Second Schedule

Land at Windy Cott, The Grove, West Kingsdown, Kent TN15 6JJ

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: **23 November 2026**

by L Douglas BSc (Hons) MSc MRTPI

Land at: Windy Cott, The Grove, West Kingsdown, Kent TN15 6JJ

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Scale: Not to Scale

