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: 25 November 2026

Appeal Ref: APP/G2245/C/25/3367363
Land at the rear of 79 Weald Road, Sevenoaks, Kent TN13 1QJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
- The appeal is made by Mr Kane Cummins against an enforcement notice issued by Sevenoaks District Council.
- The notice was issued on 14 May 2025.
- The breach of planning control as alleged in the notice is: The material change in the use in the land from woodland/forestry to residential use; Operational development by the erection of a building; Engineering operations by the creation of hardstanding.
- The requirements of the notice are: 1) Cease residential use of the land marked in purple dotted edge on the attached plan 2) Removal of the single-storey building (shaded in black); 3) Removal of the hardstanding area (marked in orange edge); 4) Restore the land to its former condition by complying with the Tree Replacement Notice served on the land dated 13 May 2025 so far as is consistent with TPO No.11 of 1988 and any obligations under the Town and Country Planning (Tree Preservation) (England) Regulations 2012; 5) Removal of any resultant materials from the Land.
- The period for compliance with the requirements is 12 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f), and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Preliminary matters

1. It became clear during my site visit that Steps 2 and 3 of the notice have been complied with, in that the building and hardstanding have been removed from the land. I have no detailed plans of the building and hardstanding which previously existed, and there is no mechanism for me to incorporate any plans other than those included with the notice into any deemed planning permission which may be granted. I will deal with this in my reasoning on the appeal under ground (a).

2. I have a duty to get the notice in order, where it is necessary to make any corrections or variations. Section 176 of the Act provides me with the power to correct any defect, error or misdescription in the notice or to vary its terms, if I am satisfied that doing so would not cause any injustice.

3. The plan attached to the notice identifies the site as including the whole plot associated with the dwelling at 79 Weald Road by a red line, despite the land affected being described as that at the rear of No.79. The plan also identifies an area of woodland coloured green which is the subject of Tree Preservation Order No.11 (1988) (the TPO), and an area edged in purple dashes. From reading the notice as a whole, it is clear that a material change of use from woodland/forestry to residential (the MCU) is alleged to have taken place on the land edged with purple

dashes, where the building and hardstanding are alleged to have been constructed. I shall therefore correct the notice by replacing the text 'in red edge' at section 2 of the notice with the text 'edged in purple dashes'. This will not cause injustice as it reduces the scope of the notice, corrects a minor error in the drafting of the notice, and does not affect the cases put forward by the parties.

The appeal on ground (b)

4. There is no dispute that the erection of a building and the laying of a hardstanding occurred. They evidently took place before the notice was issued. Therefore, to succeed on this ground in part the appellant needs to show that the MCU has not occurred.

5. In the appeal on grounds (b) and (d), the onus is on the appellant to make out their case to the standard of the balance of probabilities. Their evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

6. It is the appellant's case that the site has formed part of the residential planning unit associated with the dwelling at No.79 since at least 2003 and has been used for purposes incidental to the enjoyment of that dwelling throughout. On this basis, it is claimed there has been no change in the use of the site. However, very little evidence has been provided to support these claims, save for copies of plans which show the site within the red line of a larger application site incorporating the dwelling.

7. Aerial photographs since 2020 show the site as part of an expanse of woodland between houses located on Weald Road and Brattle Wood, with no obvious use. The inclusion of the site within the red line on plans dating back to 2000 also offers little assistance to the question of whether the MCU has taken place. The Council's photograph taken when it was considering planning application 18/00964/FUL, however, suggests there was some form of boundary between the site and the lawned rear garden to the dwelling at No.79 in 2018.

8. The historic plans show the site within an area edged red consistent with the lawned rear garden and dwelling at No. 79. These indicate that the site was within the same ownership as the rest of the dwelling at those times. That is not, however, determinative as to whether the use of the site was part and parcel of the residential use associated with the dwelling, notwithstanding the existing use of the wider area of land being described as residential in accompanying application forms. Similarly, any absence of clarification in the associated officer reports does not show that the Council accepted the site was in use for residential purposes at those times. In any event, it is important to draw a distinction between the residential use of any land associated with a dwelling and what may be referred to as the curtilage of a dwelling. Curtilage is a planning concept, rather than a use of land.

9. Based on everything I have read and seen, it is more likely than not that there has been some form of visual and physical separation between the modest lawned garden to No.79 and the expansive woodland comprising the site. This is shown to some extent in the Council's photograph from 2018. Differentiation between lawned garden and woodland areas is also shown in many of the historic site plans. A clear difference is experienced between the formal lawned garden and the informal

woodland, which is consistent along the treelines marking the edge of the woodland. The informality of the site, which forms part of a large area of woodland, means it is not intimately associated with any dwelling. On the evidence, the site is physically and functionally distinct from the lawned garden and, as a matter of fact and degree, it does not form part and parcel of the dwelling at No.79, despite being within the same ownership for a significant period. For these reasons, the site does not form part of the curtilage of the dwelling.

10. Moreover, having considered all of the evidence provided, it has not been shown, as a matter of fact and degree, that the site forms part of a single planning unit with the dwelling at No.79, in a lawful primary use for residential purposes. On the available evidence, it is more likely than not that the site comprises a physically separate area, occupied for different and unrelated purposes as an area of extensive woodland, compared to the dwelling and its lawned garden. I reach this view notwithstanding that the site and dwelling have been in the same ownership.

11. Overall, the appellant has not provided sufficiently precise and unambiguous evidence to show, on the balance of probabilities, that the MCU or the other breaches have not occurred.

12. The appeal on ground (b) therefore fails.

The appeal on ground (d)

13. There is no dispute that the erection of a building and the laying of a hardstanding took place less than 4 years before the notice was issued. On the available evidence, I see no reason to find otherwise. To succeed on this ground in part the appellant needs to show that, at the date when the notice was issued, no enforcement action could be taken in respect of the MCU. With regard to section 171B of the Act, the appellant needs to show that the MCU took place on or before 14 May 2015.

14. Many of the points set out in my reasoning on ground (b) are relevant to the appellant's ground (d) arguments. The lack of sufficiently precise and unambiguous evidence to show how the site has been used over the 10 years preceding the date the notice was issued makes it very difficult to accept the appellant's arguments on this ground. In light of the Council's photograph said to date from the beginning of 2018, it is also difficult to accept that the site was not simply an area of woodland beyond the residential garden of the dwelling at No.79 at that time, with a different primary use.

15. In summary, sufficiently precise and unambiguous evidence has not been provided to show that the MCU took place on or before 14 May 2015 or that the other breaches were substantially complete on or before 14 May 2021.

16. The appeal on ground (d) therefore fails.

The appeal on ground (a) and the deemed application for planning permission

17. As set out above, the notice has been complied with in respect of the building and the hardstanding and there are no detailed plans before me showing what they comprised. Section 177(1)(a) of the Act allows me to grant planning permission in respect of part of the matters stated in the notice. The re-erection of the building or the re-laying of the hardstanding would comprise new acts of development not forming part of the matters stated in the notice, requiring their own grant of planning

permission. Moreover, in the absence of detailed plans, now that they have been removed, I am unable to consider granting retrospective planning permission for the previous erection of a building and the laying of hardstanding. I am, however, able to consider granting retrospective planning permission for the MCU.

18. In view of the above, the main issue in the appeal on ground (a) and the deemed application for planning permission is the effect of the MCU on the character and appearance of the area.

19. The site forms part of a strong visual buffer between rows of large detached houses to the east and west. The character of the area is heavily influenced by the mature trees which cover the site and form part of a band of woodland. As such, they make a significant contribution to the attractive sylvan setting. The trees and wider woodland form an important characteristic of the locality, and they have a hugely positive effect on the appearance of the area. These trees are the subject of the TPO.

20. Although the parties are in dispute as to whether any trees have been felled in association with the MCU, on the evidence, I see no reason why the MCU may increase the likelihood of any trees being felled while the TPO is in place. The MCU does, however, increase the likelihood of moveable structures being placed on the land and fences/walls being erected within the site. This would have the potential to harm trees, but could be prevented by a planning condition. The consequence of such a condition would be that express planning permission would be needed for any structures within the site, allowing their effect on trees to be assessed.

21. While the use of the site for residential purposes allows domestic activities to take place close to the rear boundary of the opposite house on Brattle Wood, those activities would be experienced near to other residential gardens. Meanwhile, the thick tree cover within the site limits the extent of residential activities. Neighbouring residents may notice residential activities in part of the woodland, but this would be a normal and expected experience in this residential area, even with its sylvan characteristics. In this context, there would be minimal change to the character and appearance of the area, provided the residential use remains ancillary to the dwelling at No.79. This could also be controlled by a planning condition.

22. I therefore find that the MCU does not cause unacceptable harm to the character and appearance of the area, subject to conditions. Restricting the use of the site to purposes ancillary to the dwelling at No.79 would provide the necessary protection to the character and appearance of the area. Prohibiting the placing of moveable structures and the erection of fencing/walls within the site, which may otherwise not require express planning permission, would achieve the same through avoiding potential harm to trees. The significant contribution that trees make to the attractive character and appearance of the area provides the clear justification for such a condition, which is reasonable, enforceable, and necessary to make the MCU acceptable.

23. I have not been provided with evidence that any extant planning conditions already prohibit development on the site. There would be no need to prohibit other development authorised by the GPDO within the curtilage of a dwelling as I have found the site is not within the curtilage of a dwelling and granting planning permission for the MCU would not change that. The Council has not put forward

any suggested conditions, and I do not consider any other conditions are necessary to make the MCU acceptable.

24. Therefore, subject to the conditions outlined above, the MCU complies with Policy EN1 of the Council's Allocations and Development Management Plan (2015) which seeks to ensure development respects the topography and character of the area and sensitively incorporates natural features.

25. For these reasons the appeal on ground (a) succeeds in part and the deemed application for planning permission should be approved in respect of the MCU only, subject to conditions.

The appeal on ground (f)

26. To succeed on this ground the appellant needs to show that the steps required to be taken exceed what is necessary to remedy the breaches or, as the case may be, to remedy any injury to amenity which has been caused by the breaches.

27. The notice requires the cessation of the residential use of the site, the removal of the building and hardstanding, the restoration of the land to its former condition by complying with a Tree Replacement Notice (TRN) and the removal of resultant materials. The purpose of the notice is therefore to remedy the breaches by restoring the land to its former condition, in accordance with section 173(3) and (4) of the Act, and it is necessary for me to consider whether this can be achieved with less cost and disruption.

28. As I am granting planning permission on the deemed planning application under ground (a) for the MCU, Step 1 of the notice will cease to have effect on account of section 180(1) of the Act. Steps 2 and 3 have been complied with.

29. I have not been provided with a copy of the TRN and the submissions indicate that it is the subject of a separate appeal, and that there is a dispute as to whether any trees have been removed. It is excessive for the enforcement notice to require compliance with a separate notice, not least because the TRN stands on its own. For the purposes of section 173(3) and (4) of the Act, it is sufficient for the notice in this particular case to require the land to be restored to its condition before the alleged breaches took place. I shall therefore vary Step 4 by deleting reference to the TRN.

30. Removing the building and hardstanding, restoring the land to its former condition, and removing any resultant materials from the land would not be excessive to remedy the breaches.

31. The appeal on ground (f) therefore succeeds in part, to the extent that I shall vary Step 4 as outlined above.

The appeal on ground (g)

32. To succeed on this ground the appellant needs to show that 12 months falls short of what should reasonably be allowed for the notice to be complied with.

33. The appellant suggests 24 months would be a reasonable period to allow for coordination of any required landscape works, to avoid ecological disturbance, and to provide phased delivery while they are in full-time employment. Notwithstanding these undetailed claims, no evidence has been provided to suggest any period in

excess of 12 months would be reasonable for any outstanding compliance with the notice in respect of the building and hardstanding.

34. The appeal on ground (g) therefore fails.

Conclusion

35. For the reasons given above, I conclude that the appeal should succeed in part only. I will grant planning permission for the MCU, but otherwise I will uphold the notice with a correction and variation and refuse to grant planning permission in respect of the erection of a building and the creation of hardstanding. By virtue of section 180(1) of the Act, the requirements of the notice will cease to have effect so far as they are inconsistent with the planning permission hereby granted.

Formal Decision

36. It is directed that the enforcement notice is corrected and varied by:

- the deletion of the text 'in red edge' at section 2 of the enforcement notice and the substitution of the text 'edged in purple dashes'; and
- the deletion of the text 'by complying with the Tree Replacement Notice served on the land dated 13 May 2025' at Step 4 of section 5 of the enforcement notice.

37. Subject to the correction and variation, the appeal is allowed insofar as it relates to the material change in the use in the land from woodland/forestry to residential use at Land at the rear of 79 Weald Road, Sevenoaks, Kent TN13 1QJ as shown edged in purple dashes on the plan attached to the notice and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the material change in the use in the land from woodland/forestry to residential use at Land at the rear of 79 Weald Road, Sevenoaks, Kent TN13 1QJ as shown edged in purple dashes on the plan attached to the notice subject to the following conditions:

1) The residential use hereby permitted shall be ancillary to the residential use of the dwelling at 79 Weald Road only.

2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Class A of Part 2 of Schedule 2 to the Order shall be undertaken on the land edged in purple dashes on the plan attached to the enforcement notice, and no moveable structures shall be placed on the land edged in purple dashes on the plan attached to the enforcement notice.

L Douglas

INSPECTOR