



Appeal Decision

Site visit made on 21 January 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th February 2026

Appeal Ref: APP/V2255/C/23/3327688

Land East to Courtenay House, London Road, Dunkirk, Kent ME13 9LF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeal is made by Ms Ingrid Eissfeldt against an enforcement notice issued by Swale Borough Council.
 - The notice was issued on 11 July 2023.
 - The breach of planning control as alleged in the notice is Without planning permission the material change of use from residential garden to Land for the stationing of a mobile home for residential purposes.
 - The requirements of the notice are: 1. Cease the residential use of the Land. 2. Cease the use of the Land for the stationing of mobile homes or caravans for residential use. 3. Remove from the Land the mobile home shown in its approximate position marked "A" on the attached plan. 4. Remove from the Land all materials, rubbish, waste and domestic paraphernalia associated with compliance with steps 1-3 above.
 - The period for compliance with the requirements is six calendar months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the text '1. Cease the residential use of the Land. 2. Cease the use of the Land for the stationing of mobile homes or caravans for residential use' at paragraph 5 of the enforcement notice and the substitution of the text '1. Cease the use of the Land for the stationing of a mobile home for residential purposes'. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Preliminary Matter

2. The arguments presented in support of the appeal under grounds (b) and (c) refer to the length of time that a mobile home is claimed to have been on the land and occupied. These arguments would be better suited to an appeal under ground (d), and as such, there is a 'hidden' appeal under ground (d) to be considered. Similarly, the case presented in respect of the appeal under ground (f) would be better suited to an appeal under ground (g) and I shall therefore also consider an appeal under that ground. There is no need to seek further comments from the Council on account of my findings on these grounds.

The appeal under ground (b)

3. To succeed under this ground the appellant needs to show that the alleged breach of planning control has not taken place, as a matter of fact.
4. A certificate of lawful use or development (LDC) was issued in respect of the site for 'use of land as a residential garden' by another Inspector in 2022¹. A mobile home has been stationed on the land, which is being lived in by the appellant. The material change of use of the site from residential garden to land for the stationing of a mobile home for residential purposes (the MCU) has therefore taken place, as a matter of fact.
5. The appeal under ground (b) must therefore fail.

The appeal under ground (c)

6. To succeed under this ground the appellant needs to show that the MCU does not constitute a breach of planning control. The onus is on the appellant to make out their case to the standard of the balance of probabilities. 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.
7. Section 57 of the Act states that planning permission is required for the carrying out of any development of land. Section 55 provides the relevant meaning of development, which includes the making of any material change in the use of any buildings or other land.
8. There is no dispute that the site has a lawful use as residential garden, as confirmed by the LDC. The appeal decision relating to that LDC states: *'At the date of my site visit (29 April 2022), it comprised an area laid to lawn with planted areas, access drive with parking and contained a structure that appears to be a caravan and a storage container'*. It does not make any mention of the use of the caravan. In any case, the LDC only relates to how the land was being used on the date of the application, 22 November 2019.
9. The previous appeal decision does not, in any way, suggest that the other Inspector was aware that a mobile home was being lived in when the LDC was issued. Moreover, the LDC does not confirm the lawfulness of the siting of any mobile home on the land for residential purposes.
10. In some instances it may be possible that a mobile home could be stationed within a residential garden for purposes ancillary or incidental to the use of that land as a residential garden without bringing about a material change of use. However, the same is not necessarily true for a mobile home used for residential purposes, as in this case.
11. In this particular case, the appellant is said to live within the mobile home as her year-round residence. The mobile home has sleeping, cooking, toilet and washing facilities which enable it to be lived in independently. It is not therefore in use for purposes ancillary or incidental to the lawful use of the land as a residential garden.
12. Furthermore, the use of the mobile home for residential purposes has different characteristics compared to the use of a mobile home for purposes ancillary or

¹ Appeal Ref: APP/V2255/X/20/3259288

incidental to the lawful residential garden use of the land. For example, the mobile home has services connections, is likely to be associated with more comings and goings compared to a mobile home used for ancillary or incidental purposes, and there is likely to be more need for local services when someone is living on the land, rather than using the site as a residential garden.

13. I have not been provided with any information which suggests the stationing of the mobile home on the land for residential purposes has not brought about a material change of use from the previous use of the land as residential garden. I therefore find that a material change of use comprising development requiring planning permission has taken place, and I have not been referred to any planning permission which the development may benefit from. On this basis, the appellant has not provided sufficiently precise and unambiguous evidence to show, on the balance of probabilities, that the MCU was not in breach of planning control.
14. The appeal under ground (c) therefore fails.

The appeal under ground (d)

15. To succeed under this ground the appellant needs to show, on the balance of probabilities, that at the date when the notice was issued, no enforcement action could be taken in respect of the MCU.
16. At the time the notice was issued section 171B(1)-(2) of the Act provided that where there has been a breach of planning control consisting in operational development or the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The notice does not allege any unauthorised operational development or the material change of use of any building, and as such, subsections (1) and (2) of section 171B of the Act do not apply.
17. Section 171B(3) states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Therefore, the appellant needs to provide sufficiently precise and unambiguous evidence to show, on the balance of probabilities, that the MCU took place on or before 11 July 2013 and that a mobile home has remained stationed on the land for residential purposes for at least ten years prior to 11 July 2023.
18. As explained above, the previous appeal decision does not support claims that a mobile home was stationed on the land for residential purposes when the other Inspector visited the site on 29 April 2022. I have also been referred to the Grounds of Appeal of the previous appellants, who owned the site prior to the appellant in this appeal. Within an extensive timeline provided by the previous appellants it was claimed that they purchased a caravan on 11 June 2018, which was placed on the land and not lived in, and that a Council inspection carried out on 1 March 2019 confirmed this. I note the Council's aerial photograph dated 2015 also appears to show no mobile homes present on the land at that time.
19. There is extremely limited evidence to support the appellant's claims that a mobile home has been stationed on the land for more than ten years, or that any such caravan has been in use for residential purposes continuously for more than ten years. The appellant has not provided sufficiently precise and unambiguous evidence to show it is more likely than not that the MCU took place on or before

11 July 2013 and that a mobile home has remained stationed on the land for residential purposes for at least ten years prior to 11 July 2023.

20. The appeal under ground (d) therefore fails.

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

21. The main issues are:

- whether the site is a suitable location for the development in principle, with particular regard to the Council's settlement strategy;
- the effect of the development on the character and appearance of the area;
- the effect of the development on the Swale Special Protection Area (SPA); and
- the appellant's need for the development, with particular regard to their personal circumstances.

Location

22. The site is located on the edge of the rural village of Dunkirk, outside any built-up area boundary defined by The Swale Borough Local Plan (2017) (LP). Paragraph 4.3.21 of the LP explains that Dunkirk is a 'smaller to medium sized settlement', and that these settlements display less sustainable characteristics on account of their remoteness from a town and/or generally poor access to public transport or local facilities.
23. Policy ST 1 of the LP explains how sustainable development will be delivered in the Borough, including by being in accordance with the settlement strategy, by offering the potential to reduce levels of out-commuting, and by delivering a wide choice of high-quality homes, amongst other things.
24. Policy ST 3 of the LP sets out the Council's settlement strategy, which provides a hierarchy of locations which will be the focus for new development. It states that in locations outside of built-up area boundaries, development will not be permitted, except where the development is supported by national policy and capable of contributing to protecting and enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, amongst other things. Policy CP 3 of the LP sets out how the Council will deliver a wide choice of high-quality homes, requiring development proposals to be steered to locations in accordance with Policy ST 3, amongst other things.
25. There is no dispute that there are limited local facilities and that any person living at the site would be largely reliant on journeys made by private motor vehicle, although mention has been made of an infrequent bus service.
26. The National Planning Policy Framework (the Framework) outlines a presumption in favour of sustainable development, which I will address below. However, considering the small size of Dunkirk, the location of the site outside the village boundary, and given the lack of evidence of local services accessible from the site without relying on a private motor vehicle, there is little support in the Framework for development in such an unsustainable location.

27. I note claims that local services in Dunkirk are adequate for the appellant's needs, but no evidence to support this has been provided. I am also mindful that it is claimed the appellant is unable to use public transport, but the evidence does not show this means it is inevitable that they will rely on a private motor vehicle to access essential services wherever they live. The same goes for any people visiting the appellant at the site.
28. The site is not therefore a suitable location for the development in principle, with particular regard to the Council's settlement strategy. For the reasons explained above, the development conflicts with Policies ST 1, ST 3, and CP 3 of the LP.

Character and appearance

29. The site comprises an open strip of land with associated drive and turning area, located between a large Victorian building (Courtenay House) converted into flats and a modestly sized detached dwelling, on the outskirts of Dunkirk. The immediate surroundings are characterised by sporadic ribbon development, mainly to the north of Canterbury Road, surrounded by countryside. As such, it is very much in a rural and sparsely developed area, despite the obvious recent small-scale housing development of Old School Field nearby. The area is designated as part of the Kent Level Area of High Landscape Value (AHLV).
30. The mobile home currently on the site is a modestly sized shepherd's hut, with fixed timber stair leading to its entrance and connected services beneath. It is stationed at the far end of the site, set back a significant distance from its access leading to Canterbury Road, behind various fencing/screening.
31. The previous appeal decision mentions a mobile home and a shipping container being present on the land, which the other Inspector considered to be associated with the use of the land as a residential garden. In this context, the mobile home itself is not an uncharacteristic or conspicuous feature of the area, considering its size and location within a lawful residential garden, close to neighbouring dwellings.
32. However, the use of the mobile home for residential purposes, even by only one person, rather than for purposes incidental or ancillary to the residential garden, introduces more intensive activity to the site. Increased comings and goings are likely associated with the residential use of the mobile home, and are spread across most of the site on account of it being set further back from the road than neighbouring residential properties. The effect is residential activity, more intensive than that associated with a garden alone, sprawling into the countryside to the detriment of its intrinsic beauty and tranquillity. This results in a low level of harm to the rural character and appearance of the area, where residential development is mainly contained close to Canterbury Road.
33. The low level of harm caused to the character and appearance of the area is contrary to Policy DM 14 of the LP, which requires development to reflect the positive characteristics of the site and locality, and to be well sited, amongst other things. I do not, however, find any harm is caused to the AHLV on account of the modest scale of the development as seen and experienced within the wider landscape. I therefore find no conflict with Policies ST 7, DM 24 and DM 26 of the LP which require the conservation and enhancement of valued landscapes and the character of rural lanes, amongst other things.

The SPA

34. The site is within 6 kilometres of the SPA and the Council has claimed that on this basis a payment of £314.05 towards a Strategic Access Management and Monitoring Strategy (SAMMS) would be required. I have no further details in this regard, except that it is anticipated this would mitigate the effects of the development on recreational disturbance to the SPA. The appellant has indicated a willingness to make this payment, but there is no legal agreement before me to secure any contribution towards a SAMMS.
35. The SPA is a European Site, as defined by The Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). As such, I would need to carry out an appropriate assessment in accordance with the Habitats Regulations if I was minded to grant planning permission. As I have found the development conflicts with the development plan in respect of the first and second main issues, there is no need for me to carry out an appropriate assessment unless other considerations indicate planning permission should be granted. I shall return to this in my final planning balance.

Personal circumstances

36. The appellant has a severe allergy which is said to prevent her from living in 'a normal urban house' and from using public transport. Minimal details have been provided about her Multiple Chemical Sensitivity, except that it is claimed to be essential that she lives in a rural location and that she relies on a car to avoid contact with other people. There is no suggestion that the appellant would be made homeless if planning permission is refused and the notice is upheld, or that she would have any difficulty finding suitable alternative accommodation.
37. As my decision has the potential to affect a person with a disability, which is a protected characteristic under the Equality Act 2010 (EA), I must have regard to the Public Sector Equality Duty (PSED). The aims of the PSED are to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the EA; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
38. Under the Human Rights Act 1998 (HRA), Article 8 affords the right to respect for private and family life, home and correspondence. Article 1 of the First Protocol states that every person is entitled to the peaceful enjoyment of their possessions and no one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. These are qualified rights, and interference may be justified where it is in the public interest.
39. The mobile home is capable of providing an adaptable living space for the appellant in a rural area, which is claimed to be essential to avoid her severe allergy worsening. However, it is unclear why the site is any better suited to the appellant living there compared to any lawful residential properties in other rural locations, and what other options, if any, have been explored as an alternative to living in the mobile home at the site. There is also no evidence from a suitably qualified medical professional to explain why the development may provide suitable living arrangements for the appellant.

40. Policy CP 3 of the LP requires development proposals to meet the housing requirements of disabled persons, but it remains unclear how the MCU achieves this. It has not therefore been shown that the development is justified to meet the appellant's needs, and for the above reasons I afford only modest weight to the benefits of the development to the appellant on account of their personal circumstances, which have not been supported by appropriately detailed information.

Other considerations and planning balance

41. The Council cannot demonstrate a five-year supply of deliverable housing sites. Where this is the case, paragraph 11(d)(ii) of the Framework explains that the development plan policies which are most important for determining the application should be deemed out-of-date and planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes.
42. I have found that the MCU is in conflict with the Council's settlement strategy and causes a low level of harm to the character and appearance of the area, contrary to Policies ST1, ST3, CP 3, and DM 14 of the LP. It is in a countryside location and I have not been provided with evidence of services close to the site, although I note larger settlements are within a short driving distance. On the evidence, the site is not a sustainable location for the MCU, and the development does not contribute towards the effective use of land or securing well-designed places. I therefore assign significant cumulative weight to the above-mentioned conflict.
43. The weight given to such conflict would only be marginally reduced if the development was subject to a condition restricting occupation of the mobile home to the appellant on account of their personal circumstances. This is because although the appellant is unable to use public transport or live in an urban area, it does not follow that local services are always inaccessible from lawful rural living accommodation without relying on private motor vehicles. Moreover, it has not been shown that the appellant has explored alternative options to meet their needs, or why the site may be an appropriate rural location to meet their needs.
44. On the other side of the balance, the MCU provides adapted living accommodation for the specific needs of the appellant, who is unable to use public transport, unable to live in an urban area, and reliant on private motor vehicle use to access services. The Framework supports housing to meet the needs of different people and acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. There are social benefits associated with the MCU in that the appellant can live in adapted accommodation claimed to meet her needs, in a Borough where there is an acknowledged undersupply of housing. However, no evidence has been provided to show the development may be justified as the most appropriate means of meeting the appellant's needs. I therefore assign only modest cumulative weight to the benefits weighing in favour of the MCU.
45. It is claimed that biodiversity improvements have been made to the site. While the site has a tidy appearance, there is nothing before me to show that the MCU has

led to any quantifiable improvements to the condition of the site or any habitats and biodiversity. These claims do not therefore weigh in favour of the MCU.

46. Dismissing the appeal on ground (a) and refusing the deemed application for planning permission would interfere with the rights of the appellant under Article 8 and Article 1 of the First Protocol of the HRA. As qualified rights, that interference may be justified in the public interest, where proportionate. There is public interest inherent in the legitimate and well-established planning policy aims of directing development to sustainable locations and protecting the character and appearance of the area. With this in mind, dismissing the ground (a) appeal and refusing the deemed application for planning permission would be proportionate and necessary and would not unacceptably violate the rights of the appellant under Article 8 or Article 1 of the First Protocol. The protection of the public interest cannot be achieved by means that are less interfering with their rights.
47. I have also had due regard to the PSED, but the harm caused by the MCU outweighs its benefits in terms of eliminating discrimination against persons with a disability, advancing equality of opportunity for those persons and fostering good relations between them and others.
48. Bringing things together, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole, and attaching planning conditions to a grant of planning permission would not change this. Planning permission should not therefore be granted, and there is no need for me to carry out an appropriate assessment in respect of the third main issue.

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

49. The MCU conflicts with the development plan taken as a whole, and other considerations, including the personal circumstances of the appellant and the Framework do not indicate planning permission should be granted. Dismissal of the appeal on ground (a) and the refusal of the deemed application for planning permission is therefore necessary and proportionate.
50. The appeal under ground (a) fails and the deemed application for planning permission should be refused.

The appeal under ground (f)

51. To succeed under this ground of appeal, the appellant needs to show that the steps required to be taken, or the activities required to cease, exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
52. The notice requires the residential use of the land to cease, the use of the land for the stationing of mobile homes or caravans for residential use to cease, and the removal of the mobile home and all associated items from the land. The purpose of the notice is therefore to remedy the breach, rather than any injury to amenity, and it is necessary for me to consider whether this could be achieved with any less cost and disruption.
53. To remedy the breach, the notice does not need to require any more than the cessation of the use of the land for the stationing of a mobile home for residential purposes and the removal of the mobile home together with its services from the

land. Considering the lawful use of the site as a residential garden confirmed by the LDC, the first and second requirements, as originally drafted, could be open to misinterpretation. I shall therefore vary the first and second steps required to be taken to ensure they only require the cessation of the unauthorised use of the land, to provide clarity.

54. The appeal under ground (f) therefore succeeds insofar as I shall vary the notice as set out above.

The appeal under ground (g)

55. To succeed under this ground of appeal the appellant needs to show that six calendar months falls short of what should reasonably be allowed for the notice to be complied with.
56. The appellant has requested that the notice should not need to be complied with until after the Council has determined a planning application previously submitted, and after any associated appeal has been determined if that application is refused. The Council claims that application is invalid. I have not been provided with the full details of that application, but I have found that planning permission should be refused in respect of the breach stated in the notice. In reaching that decision I gave due weight to the appellant's personal circumstances and noted that there is no suggestion that compliance with the notice would make the appellant homeless. There is no indication that the appellant's personal circumstances mean a longer compliance period would be reasonable.
57. With the above in mind, six months from the date of this decision is a reasonable period for the notice to be complied with, even if the appellant's planning application is valid, ends up being refused, and an appeal is lodged against such decision.

58. The appeal under ground (g) therefore fails.

Overall conclusion

59. For the reasons given above, I conclude that the appeal should not succeed, except to the extent outlined above in respect of ground (f). I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR