

PLANNING COMMITTEE – 21st May 2026

PART 5

Report of the Head of Planning

PART 5

Decisions by County Council and Secretary of State, reported for information



Planning Inspectorate

Appeal Decision

Site visit made on 14 March 2026

by A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 24th March 2026

Appeal Ref: APP/V2255/X/24/3340364

Happy Days, Bell Farm Lane, Minister-on-Sea ME12 4JB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ("the 1990 Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Carl Lucas against the decision of the Swale Borough Council.
 - The application Ref 22/501785/LDC EX, dated 4 April 2022, was refused by decision dated 17 October 2023.
 - The application was made under section 191(1)(a) or (b) of the Act.
 - The proposed development for which a certificate of lawful use is described in the application form as follows: *use of land as a single dwelling house*.
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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 extent of the existing use which is found to be lawful.

Preliminary matter

2. As the Planning Practice Guidance (PPG) states, an application needs to describe precisely what is being applied for. The application form describes the development as an existing use however the appeal form describes the development as the erection of a dwellinghouse, which is consistent with the Council's refusal notice. The written representations refer to the latter, and I consider that description appropriate. I proceed on that basis.

Reasons

3. The **main issue** is whether the decision to refuse the LDC was well founded. The burden of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability [emphasis added].
4. The planning history is outlined in the representations, and I do not need to rehearse that here. Of relevance is the 2005 appeal decision granting retrospective planning permission for the site's residential use for one gypsy family - stationing of mobile home, touring caravan, utility room and fencing (the 2005 Permission)¹. There have been subsequent application including variations of conditions, but none are of direct relevance to this appeal. The 2005 Permission relates to the material change in the use of the site facilitated by the stationing of a mobile home. However, as the appeal parties acknowledge, the latter was replaced by the existing structure in 2009.

¹ Council ref SW/03/1396/1 appeal ref APP/V2255/A/04/1142401.

5. The site, known as Happy Days, is located at the end of Bell Farm Lane. The property is landscaped; there are two outbuildings and a residential unit. The appellant describes the latter as a building while it is labelled as a caravan or twin-unit mobile home by the Council. The structure is located along the eastern boundary, it is set back from the access, and it is placed on several jacks over solid level ground, which appears to form its foundation. Essentially, the nub of the appellant's argument is a simple one, namely, that the Council is wrong in describing the structure as a caravan because it is a building constructed on site in 2009. On the other hand, the Council refused to grant the LDC as insufficient evidence had been provided to demonstrate the structure is a building.

For the following reasons, I disagree with the Council's analysis and approach.

6. I have detected a fundamental misunderstanding requiring my attention. In this appeal, concepts like immunity and lawfulness are crucial: an incorrect approach, misunderstanding, or a misdirection can have drastic consequences. Additionally, the submitted information needs to be considered, reviewed and analysed by the decision-maker in the round, and they need to grapple with the issues in totality applying the correct tests as set out in the law and relevant judicial authority. Planning merits has no role in the determination.
7. The word "lawfulness" has a specific meaning. A use or operation may be lawful at any time if no enforcement action may then be taken in respect of that specific use. This may be because the time for taking enforcement action has expired, and the use or operation does not constitute a contravention of any requirements of an enforcement notice then in force: nothing before me indicates the latter applies here. In the context of an LDC application, the relevant date for ascertaining whether the existing use or operation is lawful is the date of the LDC application.
8. Time limits are set out in s171B of the Act and the recent change to the law is of no consequence in this case. Sub-section (3) of the provision explains: where there has been a breach of planning control consisting in the carrying out of a material change in use, *no enforcement action may be taken after the end of the period of 10-years beginning with the date of the breach*. However, the erection of a single dwellinghouse involves building work and sub-section (1) of s171B is directly relevant. This explains where there has been a breach of planning control consisting in the carrying out of building or other operations, *no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed*. Given the LDC application seeks to certify building operations involved in the erection of a dwelling, the relevant date is 4 April 2018 [emphasis added].
9. There is considerable body of judicial authority regarding the interpretation of concepts like caravan or buildings and the relevant statutory provisions: I will not summarise these judgments as the appeal parties have referred to them. The findings contained therein indicate that each case needs to be considered upon its individual circumstances on a fact and degree basis.
10. The statutory definition of a "caravan" is any structure designed or adapted for human habitation which is capable of being moved from one place to another, whether by being towed, or by being transported on a motor vehicle or trailer. This can comprise not more than two sections designed to be assembled on site, which is physically capable when assembled of being moved by road from one place to another, provided the structure does not exceed specified dimensions. The assessment requires evidence of construction and mobility. For planning purposes, the definition of the word "building" is given in s336(1) of the Act and

includes any structure. Similarly, the word “development” is defined in s55(1) and includes the carrying out of building operations.

11. I pause here with a slight digression. The Council say no photographs of the construction work have been submitted by the appellant, but statements and supporting documentary evidence, including drawing no 13282 and a structural engineer's report by a suitably qualified surveyor, have been submitted. As the PPG indicates, anyone with an interest in the land, or neighbours, may have evidence which is relevant. If that evidence supports immunity claim, it is up to the appellant to produce it, if they choose to do so, in support of the case. Similarly, if the Council has evidence of its own to disprove the appellant's case, then, instead of sitting on it, they should produce it and explain why their evidence undermines or casts significant doubt over the veracity of the appellant's claims.
12. Now then, the structure is of dimensions that meet a standard twin-unit static caravan. The Council opines it could be possible for a larger number of components to be brought onto a site and assembled into two sections if this was not a building operation, and that the final act comprised the joining of the two sections. However, the evidence presented shows that the structure was made to order as four component parts. It was delivered in parts and assembled by specialists on the site. Even if the Council is right and the axels, chassis, frame and wheels remain intact, all the technical information and drawings tendered, including the appellant's structural report, clearly shows that the structure is in fact composed of more than two sections separately constructed and designed to be assembled by means of bolts, clamps or other devices requiring significant building work.
13. I attach significant weight to the appellant's construction test argument because, apart from vague assertions, the Council produce no evidence of its own to contradict the appellant's precise statement about the nature of the building work involved in constructing the four separate components. There is nothing before me to undermine the claim that, once assembled on site, the structure has remained in place since 2009 as illustrated in the aerial photographs.
14. The evidence points to the likelihood that it would not be possible for the structure to be moved intact. As the structural engineer states, it could not be transported in one piece due to its size, weight, and means of construction. Additionally, there appear to be no evidence of lifting points, and it is unclear to me how a crane could, practically, lift the structure without causing considerable damage to the structure. It would not have the structural strength and rigidity to be lifted in one piece onto a trailer without distortion and sustaining serious damage.
15. Theoretically, the structure could be cut into separate halves, but to me that would undermine the mobility test. In addition, it would be highly impractical given its design and scale and it would potentially involve its significant dismantling. It would potentially involve the removal of the roof coverings and the roof trusses. It would involve the cutting or physical removal of the main beams and structural elements. In addition to all of that, the separation of the units would potentially expose the interiors to the elements, due to the design and internal layout of the structure.
16. Contrary to the Council's arguments, the facts and circumstances clearly demonstrate the structure fails to satisfy the construction and mobility tests. The structure cannot be deemed to be a caravan or a twin-unit caravan even if it had been described as such in several applications for planning permission². So, is it a building? In that context, several well-known legal authorities have been referred to by the appeal parties: I will not summarise these

² For example, Council ref: 18/500422/FULL. In 2018 the appellant sought the removal of condition 1) imposed on SW/07/1447.

Appeal Decision APP/V2255/X/24/3340364

judgments here. However, from the case law three factors are essentially relevant - size, permanence and degree of physical attachment.

17. The structure is not insignificant or de minimis in size and closely resembles the building shown in drawing no 13282. It is certainly large enough to have significance in the planning context, both visually and in its effect on the site and surroundings within which the site lies. Moreover, as I have already said elsewhere, there is nothing to contradict the appellant's clear statement that the structure has not moved since its erection. I have referred to the practical difficulties which would be involved in trying to move the structure from its present location given its construction, weight and scale.
18. Pulling all the above threads together, in my assessment, the structure's size combined with its attachment through its own weight strongly indicates a physical change in the land with a significant degree of permanence. As a matter of fact and degree, I find that the structure meets the definition of a building for planning purposes, which required significant building work to construct on the site. As the documentary evidence shows, the work required some pre-planning, technical knowledge and expertise. The erection of the single dwellinghouse constitutes development and required express planning permission.
19. As the planning history demonstrates, several applications were made to the Council. In practice, a site visit would be made by officers for assessment purposes. Given the structure's design and external appearance, it resembles a dwellinghouse. Alarm bells should have been triggered but it is now too late. This is because the evidence clearly demonstrates to me that the building operations involved in the erection of the dwellinghouse, shown in drawing no 13282, were substantially completed on 8 May 2009. There may have been some kind of improvements or renovations over time, but the quantum of evidence presented clearly shows to me that the building was substantially completed and used as someone's home on or before the relevant date and it has been occupied and used as such without interruption. Even if an alternative view prevails over which immunity period applies, the evidence shows that the development is lawful under the 10-year rule.
20. My inescapable findings are that, for the reasons given above, based on the evidence now available, I find that the existing operation comprised in the erection of a single dwellinghouse, illustrated in drawing no 13282, is lawful at the date of the LDC application. I shall specify that drawing for clarity's sake.

Conclusion

21. For the reasons given above and having considered all other matters, I conclude that the Council's refusal to grant a certificate of lawful development was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

Appeal Decision APP/V2255/X/24/3340364

IT IS HEREBY CERTIFIED that on 4 April 2022 the matter described in the First Schedule hereto, constituting the erection of a single dwellinghouse, in respect of the land specified in the Second Schedule hereto and edged 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 building operations comprised in the erection of a single dwellinghouse were substantially completed on or before 4 April 2018 and the matters are now time barred by reason of immunity and the matters did not constitute a contravention of any of the requirements of any enforcement notice in force.

Signed

A U Ghafoor

INSPECTOR

Date: 24th March 2026

Reference: APP/V2255/X/24/3340364

First Schedule

The erection of a single dwellinghouse as illustrated in drawing no 13282 (Stately Albion Ltd technical drawing dated 13/02/2009).

Second Schedule

Land edged as shown on the plan attached to this certificate and identified as Happy Days, Bell Farm Lane, Minister-on-Sea ME12 4JB.

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 existing operation 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 of the 1990 Act, on that date.

This certificate applies only to the extent of the existing operation as described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation or 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.

Appeal Decision APP/V2255/X/24/3340364

Plan

This is the plan referred to in the Lawful Development Certificate dated: 24th March 2026

by A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr

Land edged as shown on the plan attached to this certificate and identified as Happy Days, Bell Farm Lane, Minister-on-Sea ME12 4JB.

Reference: APP/V2255/X/24/3340364

Scale: Not to Scale

HAPPY DAYS, BELL FARM LANE, MINISTER-ON-SEA, ME12 4JB



Plan Produced for: PHILIP BROWN ASSOCIATES LTD
 Date Produced: 05 Apr 2025
 Plan Reference Number: 104/2025/0000000000
 Scale: 1:1000 @ A4

