

Delegated Report

Lawful Development Certificate (Existing)

Application no:	20221107
Location	Land Lying To The East Of Rhododendron Avenue Meopham Gravesend
Proposal:	Application for Lawful Development Certificate in respect of the continued stationing of a caravan on land for residential occupation.
Applicant:	Ms Lorraine Higgs
Site Visit	N/A Desktop Assessment

Plans & Documents

Application Form;
Lawful Development Certificate – Existing Use – Planning Statement;
Ordnance Survey Site Location Plan (scale - 1:1250);
Existing Block Plan;
Drawing No. 001 Rev A – Existing Caravan Plans and Elevations;
Document 1 – Caravan Specifications;
Documents 2 to 4 – Land Registry Copy of Title;
Document 5 – Official copy of register of title;
Document 6 – Letters from Gravesham Borough Council's Planning Enforcement Team (dated April to September 2008);
Document 7 – Photographs;
Document 8 – Ordnance Survey Site Inspection Plan;
Document 9 – HM Land Registry Survey Requisition – May 2019;
Document 10 – Statutory Declaration – Toby Davis – September 2022;
Document 11 – Statutory Declaration – Lorraine Higgs – August 2022;
Document 13 – Property Chamber, Land Registration First-Tier Tribunal Decision – December 2021;
Document 15 – Statement of Case for Property Chamber, Land Registration First-Tier Tribunal;
Document 16 – Witness Statements.

Relevant Planning History

None.

Policies & Representations

Not applicable, this is an application for a lawful development certificate under Section 192 of the Town & Country Planning Act 1990 (as amended).

Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

However, consultation was carried out and letters sent to six neighbouring properties as well as Meopham Parish Council, KCC Public Rights of Way and Local Councillors. Representations were received and the comments are summarised below;

Meopham Parish Council

It was agreed that Meopham Parish Council are unable to comment on this lawful development application as it is unaware of any evidence that would support or contradict the applicants claim of 10 years continuous residential occupation of the caravan.

KCC Public Rights of Way and Access

I have considered the application and I do not believe that it materially affects the right of way.

Neighbours

Three letters have been received from neighbouring properties (two from the same property), which have objected to the proposal for the following reasons;

- In contradiction to the local plan
- already has a illegal unoccupied caravan on site to which enforcement action by the council has been ignored
- Highly visible from property and is an eyesore
- Caravan is unoccupied and unliveable
- Loss of privacy
- In direct violation to a previous order to remove it
- Impact on protected species (bats)
- Impact on biodiversity and ecology
- Would be a change of use of the land
- A stepping stone to further development of this land

Even though the above comments have been received, due to the nature of the application it will not be relevant to the determination.

Officer Assessment

This application is for a LDC and not a full planning application. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests with the applicant and the evidence submitted must be sufficiently precise and unambiguous to enable the local planning authority to understand exactly what is involved. The decision must be made on the balance of probability. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009).

The applicant alleges that the application site has been used as a mobile home (dwelling) for a period in excess of 10 years.

Sections 191(2) and (3) of the Town and Country Planning Act 1990 (as amended) relate specifically to the determination of LDC applications and set out what is considered to be lawful;

191(2) 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.

191(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

Reference to Sections 171B(1)-(3) of the Town and Country Planning Act 1990 (as amended) sets out the time periods for taking enforcement action relating to different types of unauthorised development;

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, 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.
- (2) Where there has been a breach of planning control consisting in 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.
- (3) 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.

Taking these sections into account, the relevant period for consideration is the ten years prior to the submission of the application, i.e. **17 October 2012 to 29 October 2022.**

Summary of, and comments on (in italics), the evidence submitted by the applicant

Application Form

The application forms in section 6 states:

Please state why a Lawful Development Certificate should be granted

The use commenced more than 10yrs ago and has continued without a break since at least 2008

Section 7 states:

When was the use or activity begun, or the building works substantially completed (date must be pre-application submission)?

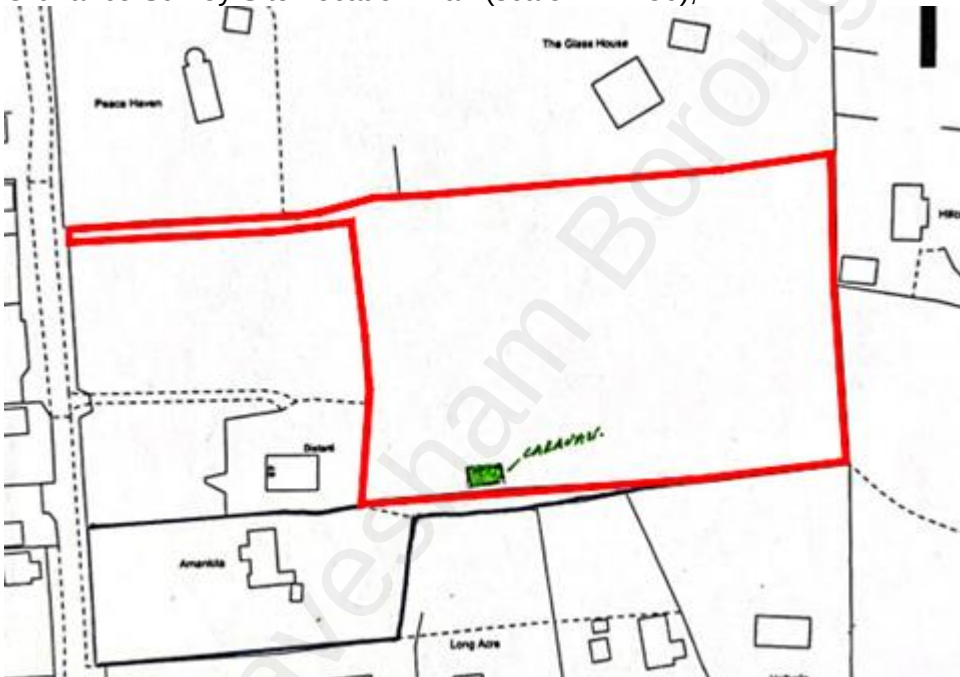
05-04-2008

The above information has been supported up by some photographic evidence and sworn affidavits from Toby Davis (occupant) and Lorraine Higgs (owner / applicant), together with witness statements of Miss Lara Leyser, Mr David Higgs, Danielle Davis and Colin Leyser from a 2019 Property Chamber, Land Registration First-Tier Tribunal, as well as the decision from that case dated 16th December 2021. In addition, copies of letters from Gravesham Borough Council's Enforcement Team dated April to September 2008 relating to the stationing of a caravan on the site have been provided.

Existing Block Plan;



Ordnance Survey Site Location Plan (scale - 1:1250);



The above drawings provide no evidence to support the application. In addition, the red line has been placed around the application site within its entirety and not just the caravan to which this lawful development certificate application relates. Therefore when assessing this application, the local authority would need to take account of not just the use of the caravan itself but the site as a whole, which would appear to seek a change of use of the whole site for residential purposes.

Document 6 – Letters from Gravesham Borough Council's Planning Enforcement Team (dated April to September 2008);

Correspondence from the GBC Planning Enforcement Team starting from April 2008 goes some way to confirm that there was a caravan stationed on the application site.

However, in the letter dated 20th August 2008, it is stated that an email from the applicant / owner dated 19th August 2008 made reference to the caravan being used for storage of garden tools for the maintenance of the land and not for residential purposes.

The applicant was advised in the letters from Gravesham's Planning Enforcement Team that the caravan was unauthorised and required express planning consent or should be removed within 14 days of the date of the letter. Therefore, the applicant knowingly continued to retain the caravan on site with the knowledge that it was unauthorised, and chose not regularise the matter, as there is no planning record showing any formal submission of a planning application. It was also noted within the letter dated 18th September 2008, that the land to which the caravan was sited, was not within the applicant's ownership.

Document 10 – Statutory Declaration – Toby Davis – September 2022 and Document 11 – Statutory Declaration – Lorraine Higgs – August 2022;

Both the signed Statutory Declarations from the applicant and her son confirm that the caravan was in situ and used as ancillary accommodation by Toby Davis from a period of July 2008 to March 2021 when Mr Davis purchased and moved into this own property in Rochester. It was confirmed that the caravan has been vacant ever since.

Document 13 – Property Chamber, Land Registration First-Tier Tribunal Decision – December 2021;
Document 15 – Statement of Case for Property Chamber, Land Registration First-Tier Tribunal; and
Document 16 – Witness Statements;

The Property Chamber, Land Registration First-Tier Tribunal related solely to the ownership of the land and whilst Judge Paton acknowledged the siting of the caravan during his site visit on 24th November 2021, the use of the caravan was not mentioned. The tribunal decision was relating to the adverse possession of the land to which the caravan is sited, not the caravan itself. It is not for this lawful development certificate application to question the ownership of the land and the applicant has confirmed she is in the site owner, and as such these documents only provide supporting evidence that the caravan was stationed on the land in 2021.

The above additional information does not provide further information which helps support the application.

Summary of, and comments on (in italics), the evidence gathered by the case officer

Information from the GBC Planning Enforcement file

The unauthorised use of the stationing of a caravan for residential purposes was brought to the GBC Planning Enforcement Team's attention in April 2008. A letter confirming a telephone conversation was sent to the applicant dated 28th April 2008, GBC Planning Enforcement set out the following;

You were advised that the caravan in question has been stationed on land to the rear of 48 Rhododendron Avenue which is deemed to be unauthorised plot, hence the stationing of the caravan on the land would require express planning consent. You advised my officer that you own the land and this was presently being registered with Land Registry.

It was confirmed that on an 'authorised' plot (such as 'Amankila') one could station a touring caravan the land, however to enable you to retain the caravan in its current location you would need to incorporate the land within your residential curtilage. As such you are request to submit a planning application on this basis within the next 28 days. You will need to enclose title plans which proved that the land is in your ownership and how you access the land.

Alternatively if you choose not to do this you are required to remove the caravan from the land when the same 28 day period, in any case on or before the 01 June 2008.

A further letter was sent on 28th July 2008 following no response or planning application coming forward and requesting contact with the Planning Enforcement Officer be made.

An email from the applicant was received on 19th August 2008 stating that the caravan was for the storage of garden tools for the maintenance of the land.

A further letter from GBC Planning Enforcement dated 20th August 2008 was sent, stating that;

In your email you proposed to use the caravan for the storage of garden tools for the maintenance of the land. As you are where you are situated within the Culverstone Valley Area (CVA) which is governed by Policy C14, furthermore I can confirm that the land in question is deemed as an 'unauthorised plot'.

The CVA guidance states the following in respect for proposals for outbuildings;

In view of the size of plots within the Valley Area there is likely to be a need for an outbuilding, in addition to a garage, for storing tools and machinery. Such proposals should be included with any application for a replacement dwelling, extension or garage.

Outbuildings shall be of a timber construction and discreetly located to the rear of the site to minimise the impact on the openness of the site and the rural wooded quality of the area. The size and height of outbuildings shall be kept to a minimum.

Where an outbuilding is provide on a plot a condition will be imposed to remove the right to erect further outbuildings without applying to the Local Planning Authority for planning permission, in order to prevent a proliferation of such structures within plots. Additional outbuildings will require special justification.

As you clearly see your proposal to retain the caravan for the storage of garden tools is totally contrary to the above guidance. Furthermore, we fail to understand how one can class a caravan as an 'outbuilding'.

I understand from Miss Chima that you are in the process of registering the land in question I your ownership, which you envisage the Land Registry will confirm mid-2009. Once you have confirmation of this my officer will be happy to meet with you on site to discuss your options in terms of use of the land and what may be permitted on the land.

Given the above information you are required to remove the caravan from the land within the next 14 days.

It is noted that the Property Chamber, Land Registration First-Tier Tribunal Decision did not grant the adverse possession of the land until December 2021, and the accompany Land Registry title (Document 3) is dated 19th April 2022.

A further email from the applicant was receive 17th September 2008 and a response from GBC Planning Enforcement was sent dated 18th September 2008 stating;

The caravan constitutes a breach of planning control and is in direct conflict with Policy C14, you have been advised of this fact in our previous correspondence. In order to resolve this breach the only solution is for you to remove the caravan from the land.

Your proposal to 'clad' the caravan is wholly unacceptable, the caravan can be used for residential purposes or has the features to be used as such, which as you have been previously informed is a breach of planning control as the land in question is an 'unauthorised plot'.

Furthermore, the land in question is not in your ownership.

This matter has now dragged on for sometime which can no longer be tolerated by the Borough Council. You are required to secure removal of the caravan within the next 7 days in any case on or before the 29 September 2008.

Failure in doing so will leave my officers no alternative but to instigate enforcement proceedings against you.

There appears to be no further correspondence.

Information from the GBC Revenues Department

An email from GBC Revenues and Benefits received 18th January 2023 confirmed that there is no record of a caravan on the Council Tax register and the property, Amankila, was removed from Council Tax as it was demolished.

Information from the Electoral Register

The caravan and the land to which it sits is not on the current electoral register, however the property known as 'Amankila' is.

Information from the planning application files

No record of any planning application being submitted for the caravan either independently or in response to the enforcement action.

Information from the case officer's site visit note and photographs taken 17 January 2023

The planning officer attended the site on 17th January 2023, along with a GBC Planning Enforcement Officer, accompanied by the applicant and the agent to this application.

The officer noted the steep access from Rhododendron Avenue and dense woodland and change in land levels of the site. The caravan was still in situ on a concrete base as per the submitted plans and there was still a gas bottle and electric cabling. There was to the rear of the caravan a wooden table and chairs. The caravan itself has clearly been empty for some time and there are significant signs of damp and rot setting in on the inside.

The internal site connection from the plot of 'Amankila' to the application site is no longer accessible and the caravan is only access from the separate access directly to Rhododendron Avenue as shown on the submitted site location plan.

This has all been evidenced by the officer's photographs.

By the applicant's own admission during the site visit that the existing caravan is no longer fit for purpose and that her son vacated in March 2021 after purchasing his own property and is seeking to replace the existing caravan and rent it out separately.

Google Earth:

It is not possible to accurately determine that the caravan/mobile home has been in situ for the times specified in the application form from Google Earth, or can it be confirmed that either the caravan on the surrounding site were used for residential purposes.

Concluding Remarks:

Whilst it is not disputed that there has been a caravan on the application site in what appears to be the same location as this current application states and in excess of 10 years since 2008, the continued use and type of occupation up to the date of this application are relevant in this case.

There is no record of any council tax being paid for the caravan on this plot of land and by the owner's own admission within her Statement of Case (Document 15), her son, Mr Toby Davis, would use the caravan for his own independence and for sleeping, however it was served by electricity from the main dwelling of Amankila. Furthermore, there was only basic cooking and washing facilities, with no means of washing laundry and therefore the main dwelling of Amankila was used for main meals and laundry, thus the caravan not operating as a completely independent residential unit.

In addition, whilst the supporting evidence states that the land that forms part of the application site was used by the occupants of Amankila, the layout, change in land levels, together with being heavily wooded would not lend itself to be used a domestic residential garden. Therefore whilst this was sufficient to result in the adverse possession decision, this does not prove residential use.

Furthermore, within the supporting statements, it has been made clear that Mr Toby Davis vacated the caravan in March 2021 when he purchased his own property and that the caravan is no longer liveable and has been vacant since that time. Therefore, whilst it is not disputed that the caravan has been on the site since 2008 and was used ancillary to the main dwelling of Amankila, it is concluded that the caravan was not occupied as an independent residential unit and that it has not been in 'continued' use of more than 10 years immediately prior to the submission of this application.

In addition, it must also be noted that the applicant was made fully aware by GBC Planning Enforcement Officers of the breach of planning control by the siting of the caravan and deliberately and knowingly did not regularise the matter by either submitting a formal planning application or removing the caravan.

Conclusion

It is understood that there is no need for independent evidence to be provided to fully corroborate the applicants contentions and that, if the evidence is sufficiently precise and unambiguous, then the LDC must be granted. However due to the limitations of the applicant's evidence, it is considered that the weight that can be attached to it is significantly reduced and the need for corroboration becomes more relevant.

The only evidence the Council is able to obtain is from the planning enforcement history which corroborates the claim that the caravan/mobile home has been in situ since pre-2008; however there is no evidence of 10 years continuous use due to the occupant vacating the caravan in March 2021. There is no evidence from Council Tax that the property is a separate residential dwelling.

It is considered that on the balance of probabilities, insufficient evidence has been submitted to demonstrate that the caravan or the site to which it is located as depicted by the red line on the accompanying site location plan, have been continuously used for residential purposes, independent of the property 'Amankila' for a period in excess of 10 years immediately prior to the submission of this application.

Recommendation:

Refusal of Certificate of Lawfulness

Case Officer:	Mrs Amanda Grout	Team Leader:	Richard Hart
Signed:	<i>A Grout</i>	Signed:	<i>R Hart</i>
Dated:	27 th January 2023	Dated:	27th January 2023