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2025/0463

**Mr Dominic Croft**

**Land off Sandy Bridge Lane, Shafton, Barnsley**

**Lawful development certificate for existing use of log cabin as a dwelling unit and ancillary residential outbuildings**

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### **Site Description**

The application site is located on the east side of Sandybridge Lane. It is accessed via a narrow dirt track which turns in and then runs north parallel with Sandybridge Lane which leads to the log cabin and associated outbuildings. The site is surrounded by trees around the perimeter and also has numerous trees and shrubs within. The northern part of the site is partially block paved and sits the log cabin and associated outbuildings, this area is also used for parking. The south eastern area of the site appears to be used as amenity space where children's play equipment and other domestic paraphernalia were noted during the site visit.

### **Planning History**

There is no planning history for the site. However an enforcement notice was served and there was a subsequent appeal.

**Appeal ref: APP/R4408/C/23/3327642** - The breach of planning control as alleged in the notice is: The material change of use of the Land to the residential use of a Caravan (approximate position edged green on Document A of Appendix 1). Associated operational development which is part and parcel of the use described in paragraph 3.1 consisting of; the erection of two outbuildings (approximate positions shown edged pink on Document B of Appendix 1) the creation of hard surfaces (shown edged blue on Document C of Appendix 1) and the erection of fences and gates (approximate position shown edged yellow on Document D of Appendix 1) at the Land. The storage of domestic items which are connected with this use described in Paragraph 3.1. – The appeal was allowed and the enforcement notice was quashed – 18<sup>th</sup> October 2024.

### **Development**

If an applicant wishes to ascertain whether the existing use of a building is lawful they may make an application to the Local Planning Authority.

Section 191 of the TCPA 1990 provides that:

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. It is the responsibility of the applicant to provide sufficient information to support the application.

The evidence provided needs to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability rather than beyond reasonable doubt.

This application is for a certificate of lawfulness to regularise the installation/erection of a log cabin and associated outbuildings used as a permanent residential dwelling on land off Sandybridge Lane, Shafton. The applicant alleges that the development occurred over four years ago and has been in continuous use since October 2018 and is therefore now lawful.

The applicant has submitted the following documents in support of their LDC application:

- Signed letter setting out the timeline of development and when various elements of the development were brought onto site, erected and installed.
- Signed letters from various companies confirming they have been delivering and providing services at the site since October 2018.
- Various historic Satellite images, dated between April 2018 and April 2021.
- Dated photographs of the log cabin being brought onto the site on the back of a lorry on the 11<sup>th</sup> October 2018.

## **Policy Context**

*Section 191 of the Town and Country Planning Act 1990: Certificate of lawfulness of existing use or development.*

*(1) If any person wishes to ascertain whether—*

*(a) any existing use of buildings or other land is lawful;*

*(b) any operations which have been carried out in, on, over or under land are lawful; or*

*(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations, or other matter.*

*(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.*

*(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*

*(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—*

*(a) the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,*

*(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or*

*(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not*

expired.

*(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.*

*(5) A certificate under this section shall—*

*(a) specify the land to which it relates;*

*(b) describe the use, operations, or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);*

*(c) give the reasons for determining the use, operations, or other matter to be lawful; and*

*(d) specify the date of the application for the certificate.*

*(6) The lawfulness of any use, operations, or other matter for which a certificate is in force under this section shall be conclusively presumed.*

*(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—*

*(a) section 3(3) of the Caravan Sites and Control of Development Act 1960 or section 7(1) of the Mobile Homes (Wales) Act 2013;*

*(b) section 5(2) of the Control of Pollution Act 1974; and*

*(c) section 36(2)(a) of the Environmental Protection Act 1990*

## Consultations

Planning Enforcement	<i>The Planning Enforcement team considered the 'log cabin' to be a temporary caravan like structure and consider that a material change of use of land has occurred. An Enforcement Notice was previously served and subsequently appealed. The appeal was allowed and the enforcement notice was quashed. The inspector did not consider that the 'structure' was a caravan and determined that no material change of use occurred.</i>
Legal	<i>The Legal Officer advised that given the Enforcement Notice was quashed, is cannot be relied upon to interrupt the 4 year continuous use of the site. Having reviewed the evidence before them, they consider on the balance of probabilities the four year test is likely to be satisfied and that it would be unreasonable to refuse this application.</i>

## Representations

A site notice was posted at the entrance of the site on Friday 20<sup>th</sup> June which expired on Friday 11<sup>th</sup> July. No representations were received.

## Assessment

Section 57 of the Town and Country Planning Act 1990 ("TCPA 1990") requires planning permission to be granted for the "carrying out of any development on land." Section 55 of the TCPA 1990 defines the two different acts of "development" as either the:

- Carrying out of building, engineering, mining or other operations in, on, over or under the land (known as operational development); or
- The making of any material change in the use of any buildings or other land.

Section 171B, specifies the time limits for enforcement action by local authorities for unauthorised development; in other words, development carried out without planning permission.

- In respect of unauthorised operational development, Section 171B(1) provides that no enforcement action may be taken after the end of four years from the date on which the operations were substantially completed (Prior to the 25<sup>th</sup> April 2024).
- In respect of an unauthorised change of use (other than change of use to any building to use as a single dwellinghouse) Section 171B(3) provides a time limit for enforcement of ten years from the date the unauthorised use began.

In 2019 BMBC served an enforcement notice at this site relating to the material change of use of land for the siting of a residential caravan, associated hardstanding and the storage of caravans for business purposes. The Enforcement Notice was quashed on appeal in October 2024. The applicant/appellant argued that a permanent residential log cabin had been erected on the site and that the two outbuildings were ancillary to the erected dwelling. The inspector agreed that the structures on site were not temporary structures given the log cabin had been extended via permanent methods of construction and therefore the structure was not a 'caravan' and a material change of use of land did not occur.

Given the above, we now need to consider the development in respect of unauthorised operational development which relies on the 4-Year Rule under Section 171B(2) of the Town and Country Planning Act 1990. This benefit only exists where:

1. The use has been continuous for at least 4 years
2. There has been no enforcement action during that time
3. The use is still ongoing at the time of the application

The 4 Year Rule starts on the date the cabin was first occupied as a dwelling without planning permission, in this case 18<sup>th</sup> October 2018. The Enforcement Notice was then served on 25<sup>th</sup> January 2019, months after first occupation. In usual circumstances, the 4 Year Rule could not be relied upon, and the applicant would not be able to claim immunity from enforcement action. However, the Enforcement Notice was quashed on appeal in October 2024, therefore does not constitute valid enforcement action, meaning, in this case, there was never an interruption to the 4-year period, and it can still be relied upon.

We must therefore consider the LDC application without merit to the Enforcement Notice. For an LDC of existing use, section 191 TCPA 1990 is relevant. The tests being:

1. 4 years of continuous use/since operational developments completed.
2. The applicant has the burden of proof to provide evidence that on the balance of probabilities the use is lawful.
3. The evidence must be precise, unambiguous and consistent.

Section 191(4) TCPA 1990 says that if the applicant's evidence is such that meets the above tests and it would be unjustified to refuse the application, it should be granted. In any other case, an LPA should refuse the application.

The applicant has submitted various pieces of evidence in support of this application, including dated photographs, dated aerial imagery and signed documentation from various sources.

The evidence provided demonstrates that the log cabin and associated outbuildings have been in continuous use for over four years, as the site as it currently is has remained the same since late 2020. The applicant has had regular deliveries from Barnsley Gas Centre for gas cylinders used for heating and cooking purposes, this has been corroborated by the Company Director in a signed document submitted as part of this application. RS Tree Care have also been providing regular tree pruning and tree care services at the site over the past 6 years, again this is corroborated in a statement signed by the Company Director.

The case is also strengthened by the fact that the Council served an enforcement notice in 2019 which acknowledges the log cabin, associated hardstanding and numerous outbuildings.

The above, together with the dated photographs and historic aerial imagery, strongly suggests that on the balance of probabilities the log cabin, hardstanding and associated outbuildings have been installed/constructed and occupied as a permanent residential unit for a period of over 4 years. As such the lawful development certificate can be granted. It is acknowledged that the signed letter from the applicant confirms part of the hardstanding was only installed in 2022, however given the other operational development has clearly been in situ for over four years and this is associated with such development, it would not be expedient to take enforcement action, especially given the containment of the site. Any future development could be subject to enforcement action.

It should be noted that the grant of this Lawful Development Certificate confirms immunity from further enforcement action related only to the buildings as show on the submitted site layout drawing (Drawing No. SEA/916/B/003). This LDC does not grant planning permission and therefore the site does not benefit from permitted development rights – any future development, including the erection of any further outbuildings or extensions would require full planning permission.

### Conclusion

From the evidence provided, the log cabin and associated hardstanding/outbuildings appear to have been constructed between 2018 and 2019 with the whole site now comprising a new residential unit. As this is more than 4 years ago and no valid enforcement action has been taken the LPA are prevented from pursuing any enforcement action related to the development show on the submitted site layout drawing (Drawing No. SEA/916/B/003) attached at Appendix 1.

### **Recommendation - Certificate of Lawfulness Granted**

# Appendix 1

## Simon Elliott Associates

Planning & Development Consultants

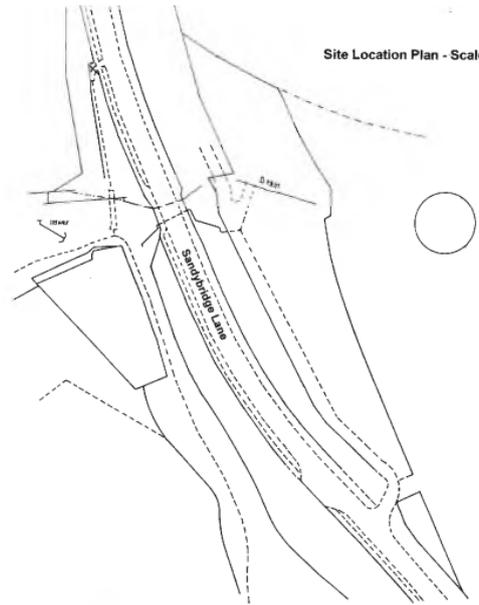
Land off Sandybridge Lane, Shafton, Barnsley.

Proposed Lawful Development Certificate.

Drawing No. SEA/916/B/003

Plan Scale 1:500 & 1:1250 @ A3 Plan Size - October 2024

Site Location Plan - Scale 1:1250



Site Layout Plan - Scale 1:500

