

Officer Report

Application No.	24/0328/FH
Site Address	Ducks Wood Hall, Stone Street, Stelling Minnis, Canterbury, CT4 6DL
Officer Name	Katy Claw
Proposal	Lawful development certificate (existing) for the continued use of caravan for residential purposes.

Recommendation

Report Number	RD-434381
Recommended Decision	Recommended to be Not Lawful
Recommendation Date	24 October 2024

Report

SITE

The site subject of this application forms a twin-unit caravan on the western side of Stone Street, near Stelling Minnis.

The caravan is accessed via a narrow private track which also acts as a shared access point from Stone Street for neighbouring sites.

The land surrounding the application site includes a large area of woodland with a small grass clearing to the eastern side within which the twin-unit caravan is set. There is a raised decking area to the northern rear end of the caravan and around the caravan to the front of the main access door is an area of concrete which leads to a pedestrian access footpath. The footpath is laid with dark gravel which matches the gravel on the access track.

The track is (in part) bordered by cut logs and bricks and the land around the caravan is separated from the shared track by a 5-bar wooden gate and fencing. The decking, footpath, driveway, fence and gate all appear to be newer than the caravan.

The site originally formed part of the land associated with Pheasants Forstal (the detached house to the north, formally known as Hedgecock Wood) but this house and some of the land has since been sold.

RELEVANT HISTORY

23/0523/FH – Lawful Development Certificate (existing) for the siting of a twin-static on land or a period in excess of 10 years.

Lawful Development Certificate granted on the basis that, on the balance of probabilities, that the use of the site for the stationing of a caravan has taken place continuously for in excess of 10 years.

22/1012/FH – Lawful Development Certificate (existing) for the siting of a twin-static caravan on land for a period in excess of 10 years.

Not Lawful on the basis that, on the balance of probabilities, that the site has been used for the stationing of a mobile home for residential purposes or a continuous period of 10 years.

The planning history below is also of relevance.

SH/79/203 – use of the land for the temporary stationing of a residential caravan.

Granted subject to the condition that the caravan is to be removed and the land reinstated to the satisfaction of the District Planning Authority on or before 31 May 1981.

PROPOSAL

This application seeks Lawful Development Certificate (existing) for the continued use of the caravan for residential purposes.

Where required on the application form the applicant has stated that the use began on 13/02/1979. However, where the applicant is prompted to provide details as to why the Lawful Development Certificate should be granted the applicant has written (quoted verbatim) *'I feel that the Lawful Development Certificate should be granted for full residential use to the twin unit caravan due to updated evidence that I have submitted. Letters from people who knew that I was living there for more than 10 years. The fact that planning permission was granted by the council in 1979 although being temporary the removal of the residential caravan did not take place and the council has never followed up on the removal and land reinstated to there satisfaction. An LDC has been granted on the 17th April 2023 Application number 23/0523/FH for the siting of a twin static caravan'*.

Taking the above statement into account, and notwithstanding the date that the use begun as supplied by the applicant, this Lawful Development Certificate is seeking an existing certificate to confirm that the twin-unit static caravan subject of 23/0523/FH has been used for residential purposes for the required 10-year period. The Local Planning Authority intends to determine this Lawful Development Certificate on the basis of the lawful residential occupancy of the twin-unit caravan to which the previous Lawful Development Certificate (23/0523/FH) pertains. Whether that use begun from 1979 or otherwise is for the Local Planning Authority to determine as part of its assessment of the evidence available.

The application is accompanied by the Application Form, supporting statement, copies of documents, undated photographs and a witness letters (unsigned or witnessed by a solicitor). These are appraised below.

CONSULTATION RESPONSES

Not required as part of the lawful process.

REPRESENTATIONS

None received.

PUBLICITY

Not required as part of the lawful process.

RELEVANT POLICIES

Not required as part of the lawful process.

APPRAISAL

Background

A Lawful Development Certificate (existing) was submitted in June 2022 for the siting of a twin-static caravan for a period in excess of 10 years. (22/1012/FH). This Lawful Development Certificate was refused on the grounds of lack of evidence.

In April 2023 a Lawful Development Certificate (existing) was granted for the siting of a twin-static caravan. (23/0523/FH). Evidence from the applicant along with evidence held by the Local Planning Authority concluded, on the balance of probabilities, that the twin-static caravan had been in situ for a period exceeding 10 years. It was established as part of that Lawful Development Certificate that a smaller caravan was stationed on the site prior to the twin-unit but that the twin-unit was likely to have been on the site from at least 1992 onwards. The Lawful Development Certificate was granted on the basis of the siting of the twin-unit.

The Location Plan (dated 05-Mar-2024) submitted by the applicant as part of this current Lawful Development Certificate outlines in red an area significantly larger than that which was outlined by them as part of 23/0523/FH. (Drawing number 2211205A). Notwithstanding, the Local Planning Authority is duty bound to consider the application as submitted and issues surrounding the extent of the red-line boundary marked out in the Location Plan will be addressed within the body of the delegated report.

Appraisal

This current application seeks a Lawful Development Certificate (existing) for continued use of the static twin-unit caravan as granted under 23/0523/FH for residential purposes. The application particulars provided set out that the Use Class being applied for falls under Use Class C3 (residential).

Evidence submitted by the applicant

Application Form:

The application form does not provide any evidence in relation to the lawfulness of the use.

The date the 'use' was said to have begun has been given as 13/02/1979, but the date upon the siting of the twin-unit caravan to which the 'use' relates contradicts this, as set out in the evidence submitted by the applicant as part of 23/0523/FH.

On this basis, the Local Planning Authority must conclude that, on the balance of probabilities, and without evidence to the contrary, any residential use of the twin-unit caravan that the applicant has confirmed this application relates to, could not have lawfully commenced on 13/02/1979 as the twin-unit caravan itself was not in situ before 1992. The conclusion of this element of the available evidence alone does not result in a refusal of the Lawful Development Certificate. Further available evidence needs to be considered in order to establish the requirements of 'balance of probabilities'.

Supporting Statement:

The supporting statement sets out when the Applicant purchased the twin unit and lived on site (formally part of Hedgecock Wood) and this also gives a timeline of family events.

- The applicant lived in the caravan as his permanent address from 1992 to 2004
- The Applicant's mother died in 2014 and the land the subject of the application was split from Hedgecock Wood. The land was renamed Ducks Wood Hall.

The land subject of this Lawful Development Certificate formed part of wider land owned by the family. Some of the original land has now been sold, including the former family home, known then as Hedgecock Wood, now known as Pheasants Forstal. This took place after the death of the applicant's Mother (in 2014). It was after her passing that the applicant named the smaller parcel of land (subject of this Lawful Development Certificate) as Ducks Wood Hall. This information adds no weight to support the use of the twin-unit caravan for residential purposes, but it does assist in establishing the facts of the site and its relationship to the surrounding land.

Other Evidence:

Evidence has been provided by way of documents from various formal bodies, including solicitors firms, utilities companies, banks, and insurance companies. The documents are listed below and all date after the period stated as being when the Applicant resided within the Static Caravan (that being between 1992 and 2004):

- Argyll Insurance Services, dated 31 March 2004 – Property Insurance -no confirmation as to the property subject of the insurance policy, but the letter is addressed to Hedgecock Wood.
- Henry Moorhead & Co Solicitors 17 February 2004 – Relates to a property search addressed to Hedgecock Wood
- Halifax Estate Agents dated 3 September 2004 – relates to property details, but no clear indication as to which property it refers to. It is addressed to Hedgecock Wood.
- Henry Moorhead & Co Solicitors dated 22 August 2005 relating to the sale of a property, presumably Hedgecock Wood. The letter is addressed to Mr Hall at Little Coppice, Cliff Road in Hythe.
- Statement from Four Jays Group addressed to Steve Hall Properties Hedgecock Wood dated 31 March 2006
- MBNA Credit Visa Card Statement dated 10 May 2006 addressed to Mr. Steven Hall at Hedgecock Wood.
- Letter from Girlings dated 15 April 2009 in respect of property insurance, letter addressed to Hedgecock Wood.
- BT Phone Bill dated 9 September 2018 addressed to Hedgecock Wood.
- BT Phone Bill dated 9 September 2019 addressed to Hedgecock Wood.

- UK Power Networks invoice dated 22 November 2019 addressed to Hedgecock Wood.
- BT Phone Bill dated 9 December 2029 addressed to Hedgecock Wood.
- Vehicle Tax reminder addressed to Mr. Hall at Hedgecock Wood dated 30 April 2020
- BT Phone Bill dated 9 December 2020 addressed to Hedgecock Wood.
- Vehicle Tax reminder dated 30 April 2021 addressed to Hedgecock Wood.

All of the above documents are addressed to Mr. Hall and the residing address on every document is given as Hedgecock Wood, which was the former family home situated to the north of Ducks Wood Hall, or a property in Hythe. Whilst the land on which the twin static resides was not known as Ducks Wood Hall until 2014, it is considered that these documents hold no weight to support the residential occupation of the twin-unit caravan due to the fact that the residing address given does not pertain to the application site and it is not evident that the content of the letters/documents relate to the static caravan, for which the applicant is seeking to determine lawfulness and in any case, would contradict other evidence that suggests that applicant was not residing at the site in any permanent capacity after 2004.

The applicant has provided a copy of planning application decision notice SH/79/203.

The planning permission granted was a temporary permission for the stationing of a residential caravan. Planning permission was granted on the condition that *'the use hereby permitted shall be discontinued the caravan removed and the land reinstated to the satisfaction of the District planning authority on or before 31st May 1981'*.

The site address to which SH/79/203 relates is given on the decision notice as Hedgecock Wood, the former family house to the north of the application site. The site plan relating to this permission has not been provided by the Applicant and the Local Planning Authority no longer holds a copy of the application.

The Local Planning Authority holds no evidence of any site visits undertaken as part of that application ensuring the removal of any caravan that may have been placed on the site following the temporary permission and the Local Planning Authority also holds no enforcement records relating to non-compliance of conditions pertaining to SH/79/203.

There is no evidence to determine whether the location/positioning of the caravan to which SH/79/203 sought permission for refers to the same parcel of land as that pertaining to the residential use of the current twin-unit caravan subject of this Lawful Development Certificate. Whilst it must be accepted that the 1979 application corresponds to around the date the applicant claims the residential use of the site begun, this 1979 decision notice alone does not confirm the continuous use of the site as outlined by the applicant for residential purposes and it also could not relate specifically to the twin-unit caravan to which the applicant refers, as it has previously been established that the twin-unit caravan was not in situ before 1992.

Supporting letters:

Letter 1 - dated 29 January 2024 from Angela Plumfleet – states that she knows the applicant and that the applicant has lived at Ducks Wood Hall longer than 10 years. She confirms that the applicant purchased a mobile home in 1992 and had it on the land next to his mother's house (known as Hedgecock Wood) and that the applicant lived on the site until 2004. This has not been signed in the presence of a solicitor.

Letter 2 - dated 29 January 2024 from the owner of Nightingale Cottage (property adjacent Ducks Wood Hall) - states that they have resided in Nightingale Cottage since 1977 and from their

knowledge an occupied caravan or lodge (with a drive) has always been on the property, although there does not appear to be a resident currently. This has not been signed in the presence of a solicitor.

Letter 3 - dated 9 February 2024 from the previous owners of Oak Tree Farm, Stowting – states that they resided at Oak Tree Farm from 1986 to 2010 and that the neighbouring land to the rear of that property is Hedgecock Wood. The letter confirms that Mrs. Hall lived at Hedgecock Wood and her son Stephen Hall lived in the chalet on the land and that to the best of their knowledge, from 1986 to 2010 Stephen Hall or someone was living in the chalet. This has not been signed in the presence of a solicitor.

Letter 4 - dated 9 February 2024 from the current occupiers of Pheasants Forstal (formally Hedgecock Wood) – this letter lends personal support to the grating of the application but does not provide any evidence in support of the lawfulness of the application. This has not been signed in the presence of a solicitor.

Firstly, letter 4 provides no supporting evidence in terms of a timeline for residential occupation of the site and so is not included in the assessment of evidence given below.

Whilst collectively Letters 1 and 3 suggest that the current twin-unit caravan on the site was occupied between 1992 – 2004, with Letter 3 suggesting a period exceeding 10 years up until 2010, none of the letters have been signed in the presence of a solicitor and therefore hold little weight by way of evidence that the residential use of the twin static has been continuous for a period of 10 years or more. Further letter 3 provides a timeline of residential occupation from 1986 to 2010 which exceeds a 10-year period, exceeding the dates given in letter 1 and giving a timeframe that doesn't align with the established siting of the twin-unit caravan subject of 23/0523/FH.

Letter 2 suggests that since 1977 there has been an occupied caravan or lodge on the site but that the current caravan is not occupied. The start date given here falls before that given by the applicant (1979). Whilst the letter suggests that a caravan/lodge of some kind was placed on the site and used for residential purposes, it also notes that the current caravan on the site is not occupied. The letter does not give any indication of when the current caravan was vacated. This letter has also not been signed in the presence of a solicitor.

Whilst the letters note that residential occupation did occur in the past within the twin-unit caravan, none provide evidence of ongoing occupation for residential purposes. The Applicant has indicated within the Application Form that no change of use has occurred since he moved out of the static, but there is no evidence submitted with the application that would suggest, on the balance of probabilities, that this is the case.

LPA Evidence

Aerial photography from 2006 – 2018 shows a static caravan on the site, but the presence of a caravan does not prove residential occupation.

The Council Tax department has confirmed that Ducks Wood Hall was registered on the Business Rate List on 18/02/2022 but backdated to 31/08/2021. There is no record of Ducks Wood Hall in either Council Tax or Business Rates prior to this period.

The name Ducks Wood Hall was formally registered by the Council's Street Naming & Numbering department on 9 December 2019 and this registration was at the request of a member of staff within the Business Rates department.

Consideration of the Evidence

Evidence relating to the use of the caravan from the 1979 to 1992 is vague and in some cases, ambiguous. It does not demonstrate, on the balance of probabilities, that the site was used continuously for the stationing of a caravan used for year-round residential purposes.

The Applicant states in his supporting statement that he ceased to use the caravan as a permanent residence in approximately 2004. This would not be sufficient to accrue lawfulness. Accordingly, evidence which postdates him moving out is of no assistance in demonstrating lawfulness. The date when the applicant states he moved out is imprecise. As such, it is considered appropriate in the circumstances to discount evidence from 2004 onwards in this regard.

The key period is therefore July/August 1992 to 2004.

The 4 letters from persons known to the applicant, but which have not been signed in the presence of a solicitor, hold limited weight. Their collective information results in an ambiguous timeline (there are large gaps in the documentary evidence), and whilst they suggest the twin static had been occupied for a period exceeding 10 years, none confirm the lawful ongoing use of the caravan for residential purposes. Evidence relating to the use of the caravan from 2004 to present day is absent. However, as they are not sworn affidavits, regardless of their imprecise nature, these letters do not demonstrate, on the balance of probabilities, that the site was used continuously for year-round residential purposes.

None of the 'other evidence' submitted demonstrates that the caravan has been occupied for any purpose – all of the correspondence is addressed to the (then) dwelling at the site – Hedgecock Wood, where the applicants mother then resided. This includes the evidence dating from 2004 onwards, when the applicant states he did not live at the site.

The onus rests firmly with the applicant to demonstrate on the balance of probabilities that the use of the site is lawful. In this instance the evidence submitted does not go far enough to allow a certificate to be issued. The evidence provided is ambiguous and leaves a time period of between 14-20 years where the use of the caravan is unknown and where it is not clear whether a change of use has occurred.

Other Considerations

In the determination of 23/0523/FH the Local Planning Authority reduced the red line from that shown on the submitted OS plan so that it extended no further than the twin-unit caravan to which the Lawful Development Certificate related, and to which the evidence demonstrated the lawfulness to extend.

The red line plan submitted by the applicant as part of this current Lawful Development Certificate outlines in red an area significantly larger than that outlined by them under 23/0523/FH and larger still than the twin-unit static caravan to which they are seeking to gain a Lawful Development Certificate for residential purposes.

No evidence has been provided in respect of the use of this wider land and it is unclear the purpose behind including such a large area. Were the LDC to be issued, the application site would need to be substantially reduced.

In this regard, and following the guidance as set out under part 4 of section 193 of the Town and Country Planning Act 1990, with regards to issuing a certificate of lawful development, the TCPA allows the Local Planning Authority to issue 'a certificate for the whole or part of the land specified in the application'.

As the application has been determined to not be lawful on the balance of probabilities, no map accompanies the decision.

CONCLUSION

The evidence submitted does not demonstrate, on the balance of probabilities, that the twin-unit caravan has had a continuous use for residential purposes. As such, a Certificate of Lawful Existing Use cannot be issued. Recommend refusal.

Recommended Refusal Reasons (1)

1

The evidence submitted does not demonstrate, on the balance of probabilities, that the twin-unit caravan has been in continuous residential use for a period of 10 years or more. As such, a Certificate of Lawful Existing Use cannot be issued.

Suggested Informatives (1)

1

This decision is based on the following documents:

Lawful Development Certificate (existing) application form – 05/03/2024

Location Plan dated 05-Mar-2024 – 05/03/2024

Supporting Statement (4 pages) – 05/03/2024

Supporting Letters (5 pages) – 05/03/2024

Supporting Evidence document (132 pages) – 26/03/2024

