

Appeal Decisions

Site visit made on 27 September 2016

by Elizabeth Jones BSc (Hons) MCTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 December 2016

Appeal A: APP/Q1825/X/16/3145120

Shurnock Farm, Salt Way, Feckenham, Redditch, Worcestershire B96 6JR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Slade Arthur against the decision of Redditch Borough Council.
- The application Ref 2015/249/CPE is dated 11 August 2015.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the siting and use of a caravan as shown edged red at Appendices 1 & 2, as having been continuously used without interruption as independent residential accommodation for in excess of ten years. As such the siting and use of the caravan as described above shall be deemed lawful without restriction forever hereafter.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/Q1825/C/16/3148749

Shurnock Farm, Salt Way, Feckenham, Redditch, Worcestershire B96 6JR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Slade Arthur against an enforcement notice issued by Redditch Borough Council.
- The enforcement notice, numbered 2015/089/ENF was issued on 5 April 2016.
- The breach of planning control as alleged in the notice is without planning permission, change of use of part of the Land, shown in the approximate position marked with an 'X' on plan 2, from use for agriculture to the occupation of a caravan ("the caravan") for permanent residential purposes and associated operational development consisting of the erection of a blockwork and open timber studded extension, a decking structure and a blockwork skirt ("the extension, decking and skirt").
- The requirements of the notice are:
 1. Permanently cease the use of the caravan for residential purposes.
 2. Remove from the Land all domestic paraphernalia and disconnect all services used in association with the unauthorised residential use.
 3. Remove the unauthorised extension, decking and skirt from the Land.
 4. Return the caravan to its original state when it was first brought onto the Land in 2007.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Application for costs

1. An application for costs was made by Mr Slade Arthur against Redditch Borough Council. This application is the subject of a separate Decision.
2. An application for costs was made by Redditch Borough Council against Mr Slade Arthur. This application is the subject of a separate Decision.

Preliminary matters

3. The planning history includes an application for a LDC (Ref: 2013/296/CPE for *the extension and alteration of a mobile home to form a permanent dwelling through operational development*). This application was dismissed on appeal on 5 March 2015¹ (hereafter referred to as the 2015 Decision). Both parties rely on this decision in their submissions.
4. From the evidence it is clear that the caravan subject of this appeal is the same caravan subject of the previous appeal.
5. With regard to the 2015 Decision, the Inspector found that the various works to the caravan were "*carried out shortly after it was installed on the land and was part of a single project to provide accommodation suitable for occupation by Gemma Fullard.*" The Inspector considered that it was "*likely that Gemma Fullard occupied the caravan in 2007 because she evidently paid for the extension and decking*". However, he was less convinced that Ms Fullard had occupied the caravan continually since 2000 accompanied at times by her partner Dean Guy.
6. The previous Inspector found that there was a lack of evidence to show that the caravan had been occupied prior to 2007 and had been continuously occupied for ten years. The Inspector also found that there was no evidence in relation to the use of the caravan in the period 2001 to 2007.
7. The Council confirm that the block work skirt, decking structure and open timber studding porch/utility room extension does not form part of the LDC application subject of this appeal.
8. It is common ground that there has been a caravan on the site in excess of ten years but it is disputed whether it has been used continuously as independent residential living accommodation. The present caravan replaced a previous one in 2007². This is not disputed by the Council whose own historic imagery from Google Earth dated 1999, 2005 and 2006 show a caravan in approximately the same location as the present one.
9. The purpose of the LDC procedure is to arrive at an objective decision based on the best facts and evidence available at the time the decision is taken. I have taken into account the 2015 Decision and have noted the Council's comments regarding the timing of the appellant's submission of evidence regarding this appeal. However, it would serve no purpose to refuse an LDC on the basis only of evidence submitted with the application, if subsequent evidence had come to light proving the case on the balance of probability. In any event it would

¹ APP/Q1825/X/14/2221299.

² Statutory Declaration made by Mr Slade Arthur on 28 July 2015 & Extract from sales particulars, Appendix 3, Appendix 5(a) Aerial Photograph 2005, Appendix 5(b) Aerial Photograph 2010, Statement of Case, Moule & Co dated August 2015 and Document B6 submitted with LDC application Ref 2015/249/CPE.

always be open for the appellant to re-apply. Thus, my decision takes into account all the available evidence before me.

Appeal A – the application for a LDC

10. Section 191(2) of the Act states that uses and operations are lawful at any time if (a) no enforcement action may be taken in respect of them and (b) they do not contravene any requirement of an enforcement notice then in force. Section 191(4) indicates that the relevant time for determining lawfulness is at the time of the application which in this case is 11 August 2015.
11. Looking at s191(2)(b) first, that is satisfied. Since the date given on the notice when it would come into effect is 15 May 2016, at the date of the application the enforcement notice had not come into force.
12. To satisfy the requirements of s191(2)(a) the appellant needs to demonstrate, on the balance of probability, that the time set out in s171B(3) is met. That is that the use of the land for the siting of a residential caravan began more than ten years prior to the date of the application i.e. 11 August 2005.
13. The appellant relies upon eight statutory declarations³, electricity invoices, a selection of bank statements⁴ and two tenancy agreements⁵.
14. From the evidence it is clear that Mr Peter Fullard occupied the caravan from September 1999 until September 2000. Also, from 9 March 2015 until the present time the appellant's daughter Mrs Tamasin Russell and her husband have lived in the caravan. What is not so clear is whether Ms Gemma Fullard occupied the caravan continuously in the intervening period as claimed by the appellant.
15. A number of the statutory declarations were put in from people who claimed principally that they had visited the site over a number of years⁶. Mr Byron does not mention seeing Ms Fullard and Mr Williams states that he saw her occasionally. None of these visits were undertaken on a regular basis and none mention visiting the caravan. Furthermore, neither Mr Byron nor Mr Williams attest to the occupation being continuous.
16. Mr Collins states that he visited the farm between 1994 and 2013 up to 20 times a year and saw either Ms Fullard or her car on a regular basis. Mr Collins states that Ms Fullard moved into the caravan in 2000 and lived there until March 2015. Mr Collins' visits are not sufficiently frequent nor the details sufficiently precise to show that Ms Fullard was living in the caravan continually for a ten year period.
17. Mr Ward attended the farm from early 2005 to 2012 most weeks for two days a week. Mr Ward does not mention meeting Ms Fullard or going into the caravan and although he says he was aware that she lived in the caravan during this time, he does not give any detail as to how he knew this.

³ Statutory declarations by: Mr John Robert Byron made on 3 August 2015, Mr Philip James Collins & Mr Ian Clifford Ward made on 30 July 2015, Mr Gwilym Rhys Williams made on 10 August 2015, Ms Janet Gwendoline O'Carroll, Mrs Tamasin Rachel Russell, Mr Slade Arthur and Mrs Judith Wendy Arthur all made on 28 July 2015.

⁴ Additional Information, Moule & Co dated April 2016, References E4 & E5.

⁵ Additional Information, Moule & Co dated April 2016, Reference E6 - Assured Shorthold Tenancy Agreements made on 30 January 2012 & 30 January 2014.

⁶ Mr John Robert Byron made on 3 August 2015, Mr Gwilym Rhys Williams made on 10 August 2015, Mr Philip James Collins and Mr Ian Clifford Ward made on 30 July 2015.

18. Whilst these statutory declarations show visits being made to the farm, none of the accounts are sufficiently detailed to establish the occupation of the caravan as continuous over a ten year period.
19. The statutory declaration made on 28 July 2015 by Tamasin Rachel Russell (the appellant's daughter) details Mrs Russell's earliest involvement with the caravan in 2007 when she recalls speaking to Ms Fullard about completing the extension works in time for Mrs Russell's wedding in August of that year. In 2012 Mrs Russell moved from London and lived with her parents until March 2015 when she then moved into the caravan having given Ms Fullard three months' notice to move out.
20. Although the appellant's statutory declaration made on 28 July 2015 states that Ms Fullard occupied the caravan as her "principle, fully independent residential accommodation for the period September 2000 to March 2015", he accepts that due to work commitments he has not spent much time at the farm compared to his wife. In a further statement dated 6 June 2016, Mr Arthur clarified that the reason that he did not spend as much time at the property as his wife is that he went to work during the day, but returned home every evening, with few exceptions. He reported seeing lights on and activity in and around the caravan on a constant and consistent basis, as well as seeing Ms Fullard most mornings tending her own animals, and arriving at or leaving her home from time to time. However he makes no mention of having any direct contact with Ms Fullard or visiting the caravan, and his declaration adds little to that of Mrs Arthur.
21. The statutory declarations made on 28 July 2015 by Mrs Judith Wendy Arthur and Ms Janet Gwendoline O'Carroll are more compelling. Ms O'Carroll as cleaner for Mrs Arthur attended the farm twice a week from 1998 to 2008 and since then has continued to visit Mrs Arthur as a friend. Ms O'Carroll had use of the barn adjacent to the caravan for personal storage and describes how whenever she went to the barn she would see Ms Fullard to chat to or would wave to her through the window if she was in the caravan. However, Ms O'Carroll provides no details regarding over what period she stored her belongings in the barn. Moreover, due to its location Ms O'Carroll would have been less likely to see Ms Fullard in the caravan since 2008 when visiting Shurnock Farm in the capacity as a friend.
22. Mrs Arthur states that Ms Fullard moved into the caravan in 2000. Mrs Arthur recalls she would see Ms Fullard coming and going from the caravan on a "regular basis/most days" as she had a clear view of the driveway from the living room window in the house. I saw at my site visit that the driveway, which passes in clear view of the front windows of the house, is the main access to/from the caravan. Mrs Arthur states that she walked her dog(s) daily around the yard, buildings and farm passing the caravan most days. Although she did not see Ms Fullard every day there were few days when she would not see Ms Fullard at all, stopping to chat with her two/three times a week. Mrs Arthur occasionally visited the caravan to discuss such things as septic tank and rent with Ms Fullard and her clothes, day to day belongings as well as her dog's things were always at the caravan.
23. Mrs Arthur describes how Ms Fullard paid for the extension to the caravan in 2007 which concurs with details in Mrs Russell's statutory declaration and with the previous Inspector's 2015 Decision.

24. Between 2001 to early 2012 Mrs Arthur was responsible for the collection of rent. This was an informal arrangement and according to Mrs Arthur, as they were not "hard and fast" about it, Ms Fullard paid rent in cash from "time to time". Also, because the amount of electric and water used was minimal and it was connected to their supply it was included in the rent. No evidence has been submitted regarding rent payments during this period. In addition, I have been provided with no tenancy agreements for the period 2001 to 2012.
25. According to the appellant's submissions when Mrs Russell moved back to live at the Farm in early 2012 she decided to formalise arrangements with Ms Fullard. Mrs Russell set up a lease agreement which was signed by Ms Fullard, arranged for an electric sub-meter to be installed and issued monthly electricity bills which were then paid by Ms Fullard into the appellant's bank account. The lease agreement, electric sub-metre and electricity bills are not mentioned in the statutory declarations made by the appellant, Mrs Arthur or Mrs Russell.
26. The electricity invoices and selection of bank statements⁷ cover the period from 30 January 2012 to 8 March 2015. Although Ms Fullard made regular payments to the appellant, due to the small amounts these payments could not have included the rent. Whilst the invoice amounts correlate with the bank statements, they do not indicate the level and nature of consumption that could support the frequency of occupation of the caravan for permanent residential use.
27. The two tenancy agreements provided cover the period from 30 January 2012 to 30 January 2014 and from 30 January 2014 to 30 January 2016 and indicate that the payable rent was £200 per calendar month. No record has been provided of the rent being paid during the period 2012 to 2015 when Mrs Russell was responsible for its collection.
28. I note the Council's concerns that the two tenancy documents although signed by Ms Fullard have not been independently verified as they have only been witnessed by the appellant's daughter. Moreover, although mentioned in the appellant's statutory declaration, I have been provided with no documentary evidence showing that Ms Fullard took over the tenancy on 30 September 2000 as an amendment to her father's tenancy and I have been provided with no other tenancy agreements to cover the period 2000 to 2012.
29. The lack of written tenancy agreements for the whole period is potentially problematic for the appellant. The submissions indicate that Ms Fullard should have paid £200 per month to the appellant for rent throughout the period 2012 to 2016 when the arrangements with Ms Fullard were more formal. It seems odd to me that Mrs Russell would go to the trouble of formalising the arrangements, collect payment for the electricity which appears to be for relatively low amounts and yet not provide a record of the rent being paid. It is not for me to comment on the arrangement but it does seriously undermine the tenancy agreements. Moreover, the electricity charges do not indicate continued occupation during that period.
30. Clearly the property should have been registered for council tax but the fact that it has not been registered does not establish conclusively that the caravan has not been occupied.

⁷ Additional Information, Moule & Co dated April 2016, References E4 & E5.

31. The Gas Safety record checks for inspections carried out on 24 January 2012 and 14 February 2013 are standard procedures and do not indicate a residential use at this time. In addition, whether or not she was a key holder, it would not be unusual for Ms Fullard to be on site in an evening as indicated on the call out sheet⁸ bearing in mind she provided security cover on occasions when the appellant was away on holiday. This does not indicate a permanent residential use of the caravan. I therefore afford these documents limited weight.
32. The Council has provided electoral roll entries which show that between 2005 and 2008 and again in 2012-2013 Ms Fullard was registered elsewhere. The appellant contends that Ms Fullard was living in the caravan at these times despite being registered elsewhere. The previous Inspector and the Council agree that Ms Fullard has been living in the caravan since 2007. However, this appears to be an intermittent use on the basis of the Council's electoral roll evidence. The explanation put forward by the appellant is that Ms Fullard would need to have a registered address for many reasons such as to vote, register with a doctor or get a bank account and the caravan was not a recognised address. However, as in the previous appeal no evidence has been provided to show this was the case. Moreover, no evidence has been provided by Ms Fullard to establish the dates, duration and nature of use or frequency of her occupation of the caravan. The appellant states that he has been unable to obtain a statutory declaration from Ms Fullard as she was extremely reluctant to provide one due to any adverse financial implications.
33. Considering all the evidence as a whole it is apparent that a caravan has existed on this site in excess of ten years. I note the previous Inspector's comments in the 2015 Decision that "for a significant period prior to 2007 Gemma Fullard had not been living on the site and that she agreed to live there again only if provided with a newer caravan and the additional space provided by the extension". It is clear from the 2015 Decision that the former caravan with its leaky roof had deteriorated to such an extent that it was removed to a tip when replaced in 2007 by a newer one. Therefore, I concur with the previous Inspector that for a significant period prior to 2007 Ms Fullard was not living in the caravan as her main place of residence. The fact that Ms Fullard carried out works to the replacement caravan in 2007 incurring personal expense to my mind shows an intention to use the caravan to live in. All this would be consistent with the electoral roll entry for the period 2005 to 2008 which indicates Ms Fullard registered elsewhere. Thus, whilst the caravan may have been used for periods for residential purposes since 2007, I consider that on the balance of probabilities it has not been lived in continuously for the required period.
34. There are significant periods or 'gaps' focussed around 2000 onwards and in particular from 2005 to 2008 and 2012 to 2013 when the evidence taken as a whole is not sufficiently precise and unambiguous for me to draw the conclusion that on the balance of probability the caravan has been lived in on a continuous basis for a period of ten years in breach of planning control.

Conclusion

35. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of land for the

⁸ Document D1 – Force 3 Security Call out Sheet.

siting of a caravan for residential purposes on land at Shurnock Farm, Salt Way, Feckenham, Redditch, Worcestershire B96 6JR was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B - the enforcement appeal

Ground (d)

36. The ground d appeal is that at the date the notice was issued no enforcement action could be taken. In order to succeed on this ground it would be necessary for the appellant to demonstrate that the use alleged, that is the use of a caravan for residential purposes took place for a period in excess of ten years before the notice was issued.
37. In my assessment of Appeal A I find that there is insufficient evidence to show that the caravan was occupied for residential purposes continuously for the required period. There are significant periods where the evidence does not show whether or not the caravan is being occupied. The appellant's case has not been made out. The appeal on ground (d) fails, at the time the notice was issued it was not too late to take enforcement action.

Ground (f)

38. The appeal on ground (f) is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in Section 173(4) of the Act and are to remedy the breach of planning control (s173(4) (a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the unauthorised residential use of the caravan to cease, removal of the extension, decking and skirt from the Land and all domestic paraphernalia, to disconnect all services used in association with the residential use and to return the caravan to its original state when it was first brought onto the Land in 2007, the purpose of the notice is clearly to remedy the breach.
39. The appellant contends that the residential use of the site became lawful in 1999 and therefore as operational development the four year rule would apply to the extension, decking and skirt. However, it has been held that it is not excessive to require the removal of all items introduced to facilitate the unauthorised use (whether or not they amounted to development in their own right and whether or not they could have been permitted development) as part of the requirements of the notice and to require the land to be restored to its condition before the breach took place⁹. The extension, decking and skirt together with the water and electricity services were installed to facilitate the unauthorised residential use. Leaving any of these works would not achieve the purpose of the notice.
40. I conclude that the steps are not excessive to remedy the breach of planning control and the appeal on ground (f) fails.

⁹ Murfitt v SSE [1980] JPL 598 & Somak Travel Ltd v SSE [1987] JPL 630.

Formal Decision

Appeal A: APP/Q1825/X/16/3145120

41. The appeal is dismissed.

Appeal B: APP/Q1825/C/16/3148749

42. The appeal is dismissed and the enforcement notice upheld.

Elizabeth Jones

INSPECTOR