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## Appeal Decision

Site visit made on 21 December 2016

**by Paul Dignan MSc PhD**

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

**Decision date: 23 January 2017**

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**Appeal Ref: APP/R3325/X/16/3152802**

**Land at OS 0675 Town Way Field, Langport Road, Muchelney, Langport, Somerset, TA10 0DQ.**

- 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 refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mrs Sandra Peggram against the decision of South Somerset District Council.
  - The application Ref 15/04897/COL, dated 22 October 2015, was refused by notice dated 23 December 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 Change of use from agricultural use to use as a forty (40) touring pitch and five (5) hard standing pitch caravan and camping site (including change of use of barn from agricultural use to use associated with a caravan and camping site).
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mrs Peggram against South Somerset District Council. This application is the subject of a separate Decision.

### Reasons

3. The appeal concerns land on the eastern side of Law Lane, comprising a strip of land beside the highway and a larger field adjoining that. The larger field has a large barn and is laid out as a camping/caravan site with electrical hook-ups. The south-east corner appears to be laid out and signed as a designated Camping and Caravanning Club area. Various facilities are provided in the barn, parts of which are shown in the application plans as being for general farm use or farming and camping use, while other parts are shown as solely for camping purposes. Part of the site is a Camping and Caravanning Club certified site, which carries with it permitted development rights for use of the land as a 5 caravan and 10 tent caravan and camping site. The site is said to have been laid out in 2000, and the appellant claims that it has been used as a forty touring pitch and five hard standing pitch site over and above the permitted development level of use for at least 10 years prior to the application date, that is since at least 22 October 2005.
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4. A use becomes lawful if it has continued for 10 years, by reference to sections 171B(3) and 191(2) of the 1990 Act, but an LDC should reflect the level and intensity of use which has continued throughout that period, taking into account typical cyclical/seasonal fluctuations where they exist, but not abnormal peaks of activity. In this case the Council accepts that the property was used and registered as a Camping and Caravanning Club site. The Camping and Caravanning Club has confirmed that part of the site was originally certificated in August 2003, for up to 5 caravans at any one time, the site area being the south-east corner referred to above. The Council looked into the use of the site in 2006, but closed its enforcement case in 2008 when it concluded that the use was as per the Camping and Caravanning Club certification and other permitted development rights allowing a maximum of 28 days use per calendar year on the adjoining land.
5. However, the Council does not accept that there is sufficient evidence to demonstrate that the use as described in the application has been continuing for a 10 year period.
6. Aerial photography<sup>1</sup> indicates that the current layout was probably established, in the main, by around 2001, which accords with the appellant's statutory declaration. There is also evidence that infrastructure, including the electrical hook-ups and some facilities, were provided by 2004, and there is nothing to contradict the appellant's assertion that much of the barn was used for campsite purposes then. However, while physical works of conversion, or to facilitate a material change of use, can be indicative of an actual change of use, there are rarely determinative. In circumstances where a certain level of the use claimed is permitted under the terms of the GPDO, I consider that evidence of actual use over and above that is critical.
7. Farm accounts for 2004 show £950 fees from the caravan/camping site, which amounts to about 126 pitch days for the year, using the advertised rates. The next firm indication of actual use is income tax sheets for the period April 2006-April 2007, recording fees of £6528, about half of which are from a single month, August. Aside from August the receipts indicate usage of 90-95 pitch days in July and September and considerably lower for the rest of the year. This does not support the level of use claimed. Receipts from late 2007 to the end of 2008, 19 in total, are described as a selection, but as evidence of use they do not show that more than 2 pitches were in use at any one time. Receipts from 2009 to 2014 tell a similar story. All of the receipts up to 2013 carry a Camping and Caravanning Club logo, so it is unclear whether these stays were by members and thus lawful in any case. There is other evidence concerning utility installation and bills, advertising, maintenance, AA certification and internet feedback, but the evidence of actual use is far from sufficient to show, on the balance of probability, that the land has been used as claimed continuously since October 2005.
8. It may well be that the receipts are no more than a selection, but the burden of proof in a lawful development certificate appeal lies firmly with the appellant. Clear and unambiguous uncorroborated evidence may suffice in certain circumstances, but the Council's investigation of the site in 2006-2008, and its conclusion in that case, casts considerable doubt on the appellant's version of

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<sup>1</sup> Google Earth; 2001, 2006 and 2009.

events, and there are representations from neighbours to the effect that for much of the time there are only a handful of visitors using the site.

9. In conclusion, whilst I accept that the site has had the capacity in terms of layout and infrastructure to accommodate the claimed use, on the basis of the evidence provided, principally that concerning actual use, I am unable to conclude on the balance of probability that the site has been so used for the requisite period of 10 years prior to the application date.
10. For these reasons I conclude that the Council's refusal to grant a lawful development certificate in the terms applied for was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

*Paul Dignan*

INSPECTOR