

Appeal Decision

Site visit made on 17 January 2017

by George Mapson DipTP DipLD MRTPI

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

Decision date: 27 January 2017

Appeal Ref: APP/F2415/X/16/3155396

Disused quarry, Oakham Road, Tilton on the Hill, Leicestershire, LE7 7DJ

- 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 Mr Andrew Parkes (CWSEC Limited) against the decision of Harborough District Council.
 - The application Ref 15/01773/CLU, dated 5 February 2016, was refused by a notice dated 11 May 2016.
 - 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 described on the application form as "*Siting of caravan on disused quarry*".
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Decision

1. The appeal is dismissed.

Background

The appeal site

2. The appeal site is a grassed field that lies in the open countryside well outside the built up limits of any settlement. A hedgerow interspersed with trees forms the southern boundary, at the eastern end of which is a gated access to the highway.
3. A touring caravan is sited close this boundary, screened by the vegetation. Nearby is a small pile of what appeared to be building materials and timber, partly covered by a tarpaulin or plastic sheeting. Beside the eastern boundary is a shed and further into the site are two picnic tables with attached benches and a barbecue.

The appellant's account of the ownership and use of the land since January 1986

4. The appellant says that the previous owner bought the land in January 1986 "*for family leisure uses*", and sited a caravan on it about six months later.
5. In January 2015 CWSEC Limited, the company of which the appellant is a director, bought the land. At the time there was a derelict caravan on it, thought to be the one that had been brought to the site in 1986. Aerial photographs taken in September 1999 and July 2006 appear to show a caravan in this position.
6. Between December 2014 and March 2015 the remnants of the caravan were dismantled and removed and overgrown vegetation was cleared away. On 13 March 2015 the appellant bought a new caravan and sited it on the land.

Preliminary matters

The scope an appeal against a refusal to grant a certificate of lawfulness

7. A certificate of lawfulness is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
8. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building, structure or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits of the development are not relevant in deciding an application for a certificate or an appeal.

The burden of proof

9. The burden of proof regarding decisive matters of fact rests on the applicant/appellant. The relevant test of the evidence is 'the balance of probability' (i.e., that it is more probable than not).

Statutory framework relating to caravans and caravan sites

10. The definitions in the Caravan Sites and Control of Development Act 1960 [CSCDA] are relevant to an understanding of the issues raised by this application and appeal. Briefly, a caravan¹ is a structure that is designed or adapted for human habitation and which is capable of being moved as a single structure. A caravan site² is land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.

The purpose for which a caravan is stationed on the land

11. Generally the use of land for stationing a caravan, whether or not for human habitation, will involve a material change of use³. However, the purpose for which the caravan is being stationed on the land – human habitation, storage, display for sale – is important since the phrase "*stationing of a caravan on land*" does not, by itself, indicate a use of that land. The purpose should be clearly stated in a planning or LDC application⁴.

"For the purpose of human habitation"

12. Stationing even a single caravan on land for the purpose of human habitation constitutes use of that land as a caravan site, and to be lawful a residential caravan site requires a planning permission or certificate of lawfulness and a site licence granted by the local authority under Part I of the CSCDA. A licence can only be granted in respect of a site which is lawful for planning purposes. Stationing a caravan for human habitation without a site licence is a criminal offence⁵.

"For the purpose of storage"

13. Use of land for the storage of a caravan does not come within the definition of a caravan site, because the caravan would not be stationed for the purposes of human habitation. It would be a materially different use. A caravan storage site is a place that is used to keep or store a caravan when it is not in use. Typically, the caravan is

¹ CSCDA sub-section 29(1): "caravan" means any structure designed or adapted for human habitation, which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include: (a) any railway rolling-stock, which is, for the time being, on rails forming part of a railway system or (b) any tent

² CSCDA subsection 1(4). Section 336(1) of the Town and Country Planning Act 1990 adopts this definition.

³ There are some instances where the stationing of a caravan on land for various purposes will not involve development, and others where "permitted development" rights apply. In this case, however, there is no evidence to suggest that any such exceptions apply.

⁴ *Woodspring DC v SSE and Goodall* [1982] JPL 784 and *Hammond v SSE and Maldon DC* [1997] EWCA Civ 888.

⁵ CSCDA section 1(2).

put into storage between trips away from the site. While in storage, the caravan cannot be lived in (i.e., used for human habitation) lawfully, either permanently or for a short period, without planning permission and a site licence.

Main issue

14. An appeal against a refusal to grant a certificate of lawfulness is confined to reviewing the Council's decision, to establish whether the refusal to grant a certificate was well-founded; that is, the decision itself, not necessarily the reasons for it.

15. The reason for refusal is:

The Local Planning Authority considers that satisfactory evidence has not been submitted by the applicant to demonstrate that, on the balance of probability, the land has been used for the storage of a caravan for a continuous use in excess of 10 years before the application 15/01773/CLU was submitted, i.e. for a continuous 10 year period preceding 05 February 2016 (such that at any time during the material time period the Local Planning Authority could have taken enforcement action based on the storage of a caravan).

16. Having regard to the evidence submitted, the main considerations in this case are:

- 1) Whether the existing use of the site should properly be regarded as use for the stationing of a caravan for the purposes of storage; and
- 2) If so, whether that use had commenced and thereafter subsisted for a continuous period of 10 years before the application was made to the extent that the Council could have taken enforcement action against it at any time during that period.

Reasons and conclusions

Consideration 1: Evidence relating to the existing use of the land

17. The application form does not specify a purpose for siting the caravan on the land. It simply describes the existing use as "*siting a caravan on former quarry*". The words "*store*" or "*storage*" do not appear in the information supplied.

18. In order to establish precisely the existing use of the land that is claimed, it is necessary to examine the information provided in support of the application and appeal. This is set out mainly in the appendices to the appellant's statement of case.

19. However, Appendices C, D and E make conflicting claims regarding the purpose for which the existing caravan is stationed on the land.

Appendix C

20. Appendix C is a document entitled "*Statement in Support of an Application for a Certificate of Lawfulness of Existing use*". At paragraph 2.10 it states that: "*It is the Applicant's intention to continue to permanently site the caravan on the Site. The caravan is used for recreational purposes for the Applicant and his family*".

21. This is the only specific mention of the purpose for which the caravan is stationed on the land, but no details are given about the nature of the "*recreational*" use. As with the information provided on the application form, the words "*store*" or "*storage*" do not appear in the statement.

Appendices D and E

22. Appendices D and E are two versions of a document entitled "*Statutory Declaration of Andrew Parkes in support of an application for a Certificate of Lawfulness of Existing use*". Appendix D is an unsigned/undated draft. Appendix E is signed by the appellant before a solicitor empowered to administer oaths and is dated 18 February 2016. A redacted copy has been supplied.

23. Appendix D, section 5, is headed "*Prior to Purchase*" and is written in the 1st person. At paragraph 5.1 the writer states: "*I am a keen camper and I wanted to purchase the site so that I could regularly take my family camping.*"
24. Appendix D, section 6, is headed "*Current Ownership and Use*" and is written in the 3rd person. At paragraph 6.5 the writer states: "*It is the Applicant's intention to continue to permanently site the caravan on the Site. The caravan is used for recreational purposes for the Applicant and his family and the Applicant regularly takes his children camping at the site.*"
25. Again the words "store" or "storage" do not appear in the statement.
26. However, Appendix E - the signed version of statutory declaration - omits the references to the applicant and his family using the site for camping. Instead, a differently worded paragraph 6.5 states that: "*It is the Applicant's intention to continue to permanently store the caravan on the site.*"
27. Appendix E was signed on 18 February 2016, prior to the determination of the LDC application on 11 May 2016. On the basis of this declaration, the Council treated the application as one seeking a certificate of lawfulness for an existing use of the land for the storage of a caravan.

My findings on the existing use of the site

28. I understand the Council's reasons for accepting the alternative version of the existing use of the land that appeared in the statutory declaration. Evidence given on oath is not dismissed lightly. However, it is important to look at the entirety of the evidence submitted and in this case I must be circumspect about the claims made in that statutory declaration.
29. The alternative claims now made are wholly at odds with the information provided previously. The statements made in Appendices C and D repeatedly state that the appellant bought the land with the intention of using it as a private campsite for his family and himself. Camping is generally understood to be an outdoor recreational activity away from home that would usually entail an overnight stay in a caravan, tent or mobile home. For the appellant, such a use would be facilitated on this land by the new caravan.
30. It seems to me implausible that the appellant (or his company) would incur the considerable expense of buying the land, clearing away the overgrown vegetation and the derelict remains of the old caravan, buying a new replacement caravan and stationing it on the site simply to store it and not use it as accommodation while he and his family used the land for camping.
31. Indeed, the statements that he made prior to his signed statutory declaration indicate that pursuing this recreational activity was not only his intention in purchasing the land from the outset but also how the site has actually been used. Those statements are consistent with my observations of the land, with its picnic tables and barbecue, all of which suggest to me that the land is put to a materially different use from simply the storage of a caravan.
32. In conclusion, I find the evidence regarding the existing use of the land, taken as a whole, to be imprecise and ambiguous. The appellant has failed to discharge the burden of proof placed upon him to demonstrate, on the balance of probability, that the existing use of the land is use for the stationing of a caravan for the purpose of storage. Consequently, a certificate of lawfulness could not be issued on the basis that it is sought.

Consideration 2: Evidence relating to the continuous use of the land for the storage of a caravan

33. In view of my findings on the first consideration – the lack of certainty over the precise nature of the existing use of the land – it is unnecessary to address the matter of the commencement, duration and continuity of that use.
34. However, even if uncertainty about the existing use did not exist, the evidence submitted is insufficient to demonstrate a continuous use of the land for any precise purpose for any 10 year period prior to the date of the LDC application.
35. The appellant's own knowledge of the use of the land appears to date from late 2014 and he has provided no first-hand testimony from anyone else who might be in a position to cast some light on the actual use that took place before he bought it. He has therefore relied on two aerial photographs of the site and snippets of information acquired from third parties to support his case. The evidence is inadequate to demonstrate the soundness of his case on the balance of probability.
36. The appellant has again failed to discharge the burden of proof placed upon him and consequently, a certificate of lawfulness could not be issued on the basis that it is sought.

Conclusions

37. I have taken account of my observations at the site and all the matters raised in the written representations. For the reasons given above I conclude that the Council's refusal to grant a certificate 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.

George Mapson

INSPECTOR