
Appeal Decisions

Inquiry held on 17 January 2017

Site visit made on 17 January 2017

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 22 February 2017

Appeal Ref: APP/W1145/C/16/3150303

Narracott Wood, Chilla Road, Beaworthy, Devon EX21 5LA

- 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 G Koffman against an enforcement notice issued by Torridge District Council.
- The enforcement notice, numbered E/14/0168/UND, was issued on 13 April 2016.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from use for Forestry to a mixed use for Forestry and residential by the siting of a static caravan (in the approximate position marked with an X on appendix 1 and shown in the photograph as appendix 2) for residential purposes.
- The requirements of the notice are:
 - i) Cease using any part of the land for residential purposes.
 - ii) Remove the caravan from the land and any associated domestic paraphernalia for the purpose of that use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

Appeal Ref: APP/W1145/X/16/3150455

Narracott Wood, Chilla Road, Black Torrington, Beaworthy, Devon EX21 5LA

- 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 Gordon Koffman against the decision of Torridge District Council.
- The application Ref 1/0228/2015/CPE, dated 28 February 2015, was refused by notice dated 27 April 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 permanent occupation of mobile home as main residence for continuous period in excess of ten years.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.

Preliminary matters

1. All oral evidence presented at the Inquiry was taken on oath. At the Inquiry a Statement of Common Ground (SoCG) was agreed and submitted. It was also agreed that there was a minor typographical in Section 3 of the enforcement notice which should read '..at appendix 2...' That error does not go to the heart of the notice and could have been corrected without prejudice had I been upholding it.
2. Both appeals concern the legality of the use and arguments concerning planning merits and planning policies are not for my consideration under either appeal. The burden of proof rests with the appellant, the relevant test of the evidence being the balance of probability.
3. It was agreed that the words 'for continuous period in excess of ten years' in the LDC description were superfluous and I have amended the description in my decision. To do so has not led to prejudice to either party.
4. The enforcement notice refers to a 'static caravan' whilst the LDC application refers to a 'mobile home' both descriptions are not incorrect but for the purposes of clarity I shall use the term 'caravan'.

Background

5. The appeal site consists of approximately 40 hectares of woodland bounded by the A3072 to the north and Chilla Road to the south. The caravan is situated in the southernmost corner next to a vehicle access and the road, from which it can clearly be seen. At my site inspection I was able to see inside the caravan and saw that it had a lounge area, kitchen, bathroom, bedroom/study and main bedroom. A log burner provided heat and a large gas bottle was connected to the rear. The kitchen had all the facilities one would expect to see in a caravan and a composting toilet was evident within the bathroom. A standpipe provides mains water.
6. There was some debate at the Inquiry as to whether the caravan provided the facilities required for day-to-day living. Whilst I accept from what I saw that the accommodation provided might not meet the standards or expectations of the Council for use as a permanent residence that is not the test. Consideration should be given as to whether what is provided is sufficient for day-to-day living, for washing, cooking, eating and sleeping. Under cross-examination the Council's Enforcement Officer accepted such facilities were provided and that was reflected by what I saw on site.
7. In that light and taking into account matters agreed in the SoCG, and the evidence submitted, the following points are not in dispute:
 - The caravan meets the definition of a caravan¹ it comprises a lounge, kitchen/diner, bathroom and two bedrooms and was brought onto the site in November 2000.
 - The act of stationing a caravan on land is not development but the use of the caravan for residential purposes is and without planning permission constitutes a breach of planning control. Section 171B(3) of the Act sets out

¹ Section 29 of the Caravan Sites and Control of Development Act 1960

that no enforcement action may be taken against such a breach after the end of the period of ten years beginning with the date of the breach.

- The case of *Thurrock*² found that if at any point during the relevant period enforcement proceedings could not have been carried out then such a period cannot count towards the rolling period of 10 years.
 - The documentary evidence submitted by the appellant (statutory declarations, bills, correspondence etc) to support his case are undisputed.
 - The appellant has been on the Council's register of electors continuously from 2003 at the Narracott Wood address.
8. Based on the above, the nub of the issue between the parties with regards to both appeals is whether the residential use of the caravan has continued substantially uninterrupted³ for the salient period. In respect of the s174 appeal that is 10 years or more at the time the enforcement notice was served the relevant date being 13 April 2006. With regards to the LDC appeal the period is 10 years or more on the date the application was submitted.
9. The issues are therefore broadly the same for both appeals and as such I shall deal with them together.

Ground (d) and the LDC appeal

10. In the case of applications for an existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. In this case the Council does not seek to criticise the evidence submitted by the appellant, save to say they would have expected more for certain periods. Nevertheless they place significant weight on their own account and evidence in respect of the matters of fact.
11. In the first instance the Council aver that the appellant resided at Little Bickington Farm where he had a tenancy agreement between February 2008 and March 2014. During that period the Council say it was unlikely that he would have been living at Narracott Wood. That is borne out by evidence from the Chairman of the Trust which managed the farm and correspondence from the appellant that he was taking over tenancy of the farmhouse. In addition to this the appellant informed a Council Revenue Inspector in October 2009 that there was no residential accommodation at Narracott Wood. It is to these matters that I now turn.
12. There is no dispute that the appellant had a tenancy agreement in respect of Little Bickington Farmhouse in High Bickington from the period of 22 February 2008 to 10 March 2014. The farmhouse was some six bedrooms and the appellant also had the use of a large yard and a number of outbuildings including two large barns. I heard that the yard and buildings were well utilised for the appellant's forestry business and the associated equipment and storage of materials. It's also accepted that the farmhouse was closer to one

² *Thurrock BC v SSETR and Holding (CA)* [2002] JPL 12782

³ As set out in appeal decision ref: APP/K3606/X/11/2147586 submitted by the Council.

- of the appellant's larger woodland holdings and to other places where he worked.
13. In addition an email from the Chairman of *High Bickington CPT Ltd* who was responsible for letting out the farmhouse sets out that, in his view, the appellant occupied the farmhouse on a 7 days a week and 52 weeks a year basis and that it was believed he was in permanent residence and carried out a good deal of business from the unit. Furthermore the letter from the appellant to the Council Tax Department dated 25 March 2008 states that he was taking over single person occupancy of the farmhouse from the 6 April 2008 and the barn would be used for purposes ancillary to his main Forestry/Agricultural holding at Burrington.
 14. The Inquiry also heard from the Council's Revenue Collection Officer who completed a Revenue Visit Report dated 3 September 2014 where it is stated that '.. when I spoke to him in 2009 he said there was no accommodation there [Narracott Woods] and that he lived at the High Bickington address that we had him liable at.' The Officer repeated that view under cross examination and I have no reason to doubt her recollection of the conversation. In addition there is no dispute that the appellant was given single occupancy discount in respect of the Council Tax he was paying at the farmhouse.
 15. Looking at those matters together and in isolation it is understandable why the Council would come to the conclusion they have. However, the appellant set out that conditions within the farmhouse itself were not ideal, there was no central heating and it was mainly unfurnished. Whilst we only have his account on this matter it seems to me that poor condition was reflected by the amount of rent he was paying at that time. Any reasonable reader would expect a well-maintained, serviceable, six-bedroom farmhouse, associated land and buildings to attract far more rent than that which was being paid.
 16. In addition the email from the Chairman of the Trust is untested and sets out that the author is 'unable to confirm' the appellant physically occupied the farmhouse. It must therefore carry little weight particularly when set against the undisputed statutory declaration of a Chartered Surveyor which sets out that the caravan has been used as a permanent residence since his first visit in November 2006. The evidence of the appellant that building work which started in 2009 around the farmhouse, and restricted access to it for long periods of time, also goes unchallenged. As does the appellant's assertion that other people occupied the farmhouse effectively sub-letting the premises, as corroborated by the submitted Council Tax evidence.
 17. In addition there are numerous documents addressed to the appellant at Narracott Wood, these range from phone bills to insurance quotes. Whilst such correspondence does not confer that a permanent residential use was taking place it seems to me that, if the appellant had been living elsewhere, then letters of some import such as those from Solicitors concerning Land Titles and Enduring Power of Attorney would not have been sent to the Narracott Wood address. I recognise the majority of submitted correspondence precedes the February 2008 date there is nevertheless banking, insurance and DVLA correspondence after that date. Post was being delivered and the correspondence is undisputed, this weighs in favour of the appellant.
 18. Turning to the issue of Council Tax, the Council confirm that they visited the wrong address in 2009 so the appellant would not have been there in any

event. I accept that Council Tax was not being paid in respect of the caravan and that a conversation was had between the appellant and the Revenue Collection Officer when accommodation at Narracott Wood was discussed. However, time has passed, the appellant's recollection of the conversation differs from that of the Council and the conversation, some six years ago, was not recorded by either party. The Revenues Visit Report for the first visit sets out that there was no accommodation there but that is clearly contradictory given it refers to a completely different site and this tempers the weight I can give to it.

19. Moreover, there is no dispute that the appellant tried to register the property for Council Tax and it was open to the Council to inspect the premises at any point to establish what the caravan was being used for; the appellant did not choose to hide the caravan away or the fact that he was using it. That is as evidenced by the fact he has been registered to vote at the Narracott Wood address since 2001. Whilst I recognise the letter from the appellant dated 25 March 2008 sets out the appellant would be taking over 'single person occupancy' of Little Bickington Farm, it does not confirm that the farmhouse became the appellant's sole residence at that point.
20. Furthermore I found the appellant to be forthright in his evidence with little appearing to be held back. I say that as he himself volunteered that around 2008/9 he stopped using a BT line at Naracott Wood instead preferring to use the broadband line at the farmhouse. That was something he need not have brought to the table and was not borne out of any direct questioning; indeed it could have counted against him. Thus, his apparent willingness in offering such facts does, in my view, count in his favour and adds weight to the evidence he gave orally.
21. Overall, and having considered all matters raised, I find as a matter of fact and degree that the evidence weighs in favour of the appellant using the caravan at Narracott Wood as his sole residence with occasional stays at Little Bickington Farm. The appellant's evidence is sufficiently precise and unambiguous to find, on the balance of probability, that the residential use of the caravan has subsisted for the requisite periods without substantial interruption⁴.

Conclusions

Appeal Ref: APP/W1145/C/16/3150303

22. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended do not need to be considered.

Appeal Ref: APP/W1145/X/16/3150455

23. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the permanent occupation of the mobile home as a main residence was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

⁴ As set out in appeal ref: APP/X95/W1715/2441 submitted by the Council

Formal Decisions

Appeal Ref: APP/W1145/C/16/3150303

24. The appeal is allowed and the enforcement notice is quashed.

Appeal Ref: APP/W1145/X/16/3150455

25. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Richard Perrins

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr G Glover Solicitor

He called

Gordon Koffman

Appellant

Heather Woodman BSc BTP MRTPI

Planning Consultant

FOR THE COUNCIL

Miss Stacey Dorey Solicitor

She Called

Andrew Fenge

Enforcement Officer

Marina Fursden

Revenue Collection Officer

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Statement of Common Ground

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 28 February 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probabilities the caravan, by the above date, had been stationed on the land providing a single, self-contained unit of residential accommodation, and was continuously used as such, for a period of ten years without the benefit of planning permission, deemed or otherwise, such that enforcement action could have been taken against the use of the land for those purposes at any time during that period. The use was therefore immune from enforcement action by reason of the passage of time.

Signed

Richard Perrins.

Inspector

Date: 22 February 2017

Reference: APP/W1145/X/16/3150455

First Schedule

Use of the land for the stationing and permanent occupation of a mobile home as a main residence.

Second Schedule

Land at Narracott Wood, Chilla Road, Black Torrington, Beaworthy, Devon EX21 5LA

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 22 February 2017

by **Richard Perrins MA MCMi ND Arbor Tech ArborA**

**Land at: Land at Narracott Wood, Chilla Road, Black Torrington, Beaworthy,
Devon EX21 5LA**

Reference: APP/W1145/X/16/3150455

Scale: Not to Scale

