
Appeal Decisions

Site visit made on 28 February 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 16 March 2017

Appeal A: APP/E2001/X/16/3157950

Alder Lodge, Feoffee Lane, Yapham, Pocklington, East Yorkshire YO42 1PF

- 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 Derek Pearson against the decision of the East Riding of Yorkshire Council.
- The application, Ref: DC/15/01630/CLE/WESTWW, dated 14 May 2015, was refused by notice dated 2 September 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 Existing Use or Development (CLEUD) is sought is a Class C1 use of a static caravan as rented accommodation for use by contract workers and others on a non-permanent basis.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/E2001/C/16/3162243

Alder Lodge, Feoffee Lane, Yapham, Pocklington, East Yorkshire YO42 1PF

- 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 Derek Pearson against an enforcement notice issued by the East Riding of Yorkshire Council.
- The enforcement notice, LPA Ref: 14/00864/UNUSE, was issued on 17 November 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised change of use of land for the siting of a caravan used for residential purposes.
- The requirements of the notice are to:
 1. Cease use of caravan as self-contained residential unit sited in area shaded blue on map (*sic*); and,
 2. Disconnect caravan from all utilities and remove caravan from area outlined in red on map (*sic*).
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(d) of the Town and Country Planning Act 1990 as amended. As 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 dismissed and the enforcement notice, as corrected, is upheld.

Preliminary Matters

1. There are a number of matters that require clarification at the outset, before I consider the details of the appeals, which both relate to the same development
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- the use of a static caravan sited on land at Alder Lodge for residential purposes.
2. In respect of Appeal A, this concerns an application for a Certificate of Lawful Existing Use or Development (CLEUD) phrased in the terms set out above, including a reference to Class C1 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO). The Council's decision notice alters the description slightly to "continued use of single static caravan for short term letting under Class C1 (hotels, boarding house and guest houses)". I have seen nothing to indicate that the appellant agreed to a variation in the description of the proposal thus I shall prefer that given in the application. However, I do not consider that the reference to Class C1 of the UCO is strictly correct, as that Class relates to the use of premises or buildings, whereas the siting of a caravan for residential purposes is a use of land, thus this Class of the UCO is not applicable. In all these circumstances, it seems to me that the appellant is applying for a CLEUD for the siting of a residential caravan for short term letting, as stated in Section E of the appeal form, and I shall deal with the appeal on that basis.
 3. Turning to the enforcement notice there are a number of matters concerning the wording of it that require consideration with a view to determining whether correction or amendment should be made, using the powers available to me under Section 176(1) of the Town and Country Planning Act 1990 (The Act), provided this could be done without causing prejudice or injustice.
 4. Firstly, there is a typing error in the address given in Section 2 as it refers to Feofee Lane, rather than Feoffee Lane. No prejudice has been caused by this error and appropriate correction can be made.
 5. Secondly, however, the notice alleges an unauthorised change of use of land for the siting of a caravan used for residential purposes but it does not state what the previous use of the land was. Moreover, it relates to an area shown edged in red on the attached plan which contains both the appellant's dwelling, and its residential curtilage, and an area of agricultural land, including various buildings used in connection with that use. I established at my inspection that the land edged in red is in the ownership of the appellant, and that the caravan is sited in the position coloured in blue on the plan, although this is only referred to in the requirements of the notice.
 6. No reference has been made in the written representations to the planning unit, but it seems to me that it is likely to be the whole of the land in the appellant's ownership, albeit that the dwelling, Alder Lodge, and its garden or residential curtilage are reasonably distinct, thus there is a separation from the remainder of the land, which is primarily in agricultural use. The caravan has been sited within the area of agricultural land and it seems to me, in all these circumstances, that the notice should be corrected (a) to exclude the residential curtilage of Alder Lodge, and (b) to make appropriate reference to a material change of use of the remainder of the land from agricultural use to a mixed use of agriculture and use for the siting of a caravan used for residential purposes, in the location marked in blue on the plan.
 7. I do not consider that such correction would cause prejudice or injustice to either the Council or the appellant, as it relates to the factual situation at the site and does not alter the principal thrust of the notice. Use of the powers available to me is therefore appropriate.

8. On a third matter, the requirements of the notice need to match the allegation but Step 1 refers to the use of the caravan as a “self-contained residential unit” which is a phrase that is more normally used in connection with the material change of use of a building. However, given the corrections to the wording of the allegation discussed above, the requirements of the notice can also be corrected to match the revisions made without causing any prejudice or injustice to either party and I shall make appropriate correction accordingly.

THE APPEAL AGAINST THE REFUSAL OF A CLEUD AND THE GROUND (d) APPEAL

9. I shall deal with the two appeals together as the issues and submissions cover the same main issue – the legal question of whether the material change of use that has taken place on the appeal site is now immune from enforcement action through the passage of time, including whether the use has been shown to have taken place for a continuous period of over ten years preceding the date of the application for a CLEUD.
10. In such consideration, I draw attention to the fact that the burden of proof in appeals of this nature lies with the appellant, having regard to national procedural guidance¹, as referred to in the Planning Practice Guidance (PPG), and pertinent case law², with the relevant test being on the balance of probabilities³. I am also mindful of the fact that it has been found, in *Gabbitas*⁴, that the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant’s version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed. Finally, I confirm that the planning merits of the use, and the question of whether or not planning permission should be granted, are not before me.
11. The appellant’s case in relation to these appeals is based upon a claim that the static caravan has been sited on his land and used for short-term letting since the late 1990’s, and therefore for over ten years. In support of this claim the appellant has submitted a statement giving his recollections of the history of the caravan, and its occupation, since its purchase in 1996 and he produces five letters from people with knowledge of the site over that period. He has also submitted various maps and plans which show the location of the caravan.
12. The Council, however, do not consider that the combined evidence is clear and unambiguous and, in particular, that it shows that the caravan has either been located within the appeal site, as defined by a red line on the application plan, or that it has been used continuously for short-term lettings throughout the relevant ten-year period.
13. In considering these submissions I start with the question of the relevant site. On the plan submitted with the application for a CLEUD, the site is tightly defined and shown with a red line bounding an area where the caravan is currently sited, together with an area that acts as a hardstanding. The plan attached to the enforcement notice, as discussed above, shows a wider area, albeit that the location of the caravan is in roughly the same position within that area, as shown coloured blue.

¹ Annexe E of Procedural Guide “Enforcement Notice Appeals – England”, 23 March 2016, Planning Inspectorate.

² *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

³ *Thrasyvoulou v Secretary of State for the Environment No 1* [1984] JPL a732.

⁴ *Gabbitas v SSE & Newham LBC* [1985] JPL 630.

14. A plan submitted by the appellant with his CLEUD application shows four locations for the caravan over the period from 1995 to 2010. Three of the locations, for 1995, 2007 and 2010, would appear to fall within the area identified by the Council on the plan attached to the enforcement notice, but that for 1998 lies on land to the east outside the current planning unit. This area of land was sold in 2009, together with Yapham Holds Farmhouse and an area of land to the rear that now contains a site for touring caravans and camping pods.
15. Three points arise from this plan of relevance to the appeals. Firstly, the CLEUD application plan shows a tightly confined area, and the only location that coincides with that area is that for 2010. Earlier sites for the caravan are elsewhere, including one that is not on land currently owned by the appellant. This evidence shows that a CLEUD cannot be granted as, by his own admission, the caravan has not been shown to have been sited on the application site for over ten years, irrespective of the use made of the caravan which I shall, nevertheless, discuss below. Indeed, the appellant states that it has only been on its present site since 2009, when the adjoining land, and Yapham Holds Farmhouse, was sold to the present owners. In this context, I note that the Council contend that neighbouring occupiers state that the caravan was not in its present position when they moved into Yapham Holds Farmhouse in 2009, and that a Google Earth photograph, dated 2005, shows it in a different position, but neither the neighbour's representation nor the photograph have been produced, so I can give little weight to this assertion.
16. Secondly, the fact that the enforcement notice identifies the location of the caravan in a specific position, coloured blue on the plan attached to the notice, is of some relevance, but not determinative, as it could be moved around within the planning unit without loss of use rights. However, the appellant's evidence does not show its continuous siting either in that position, or within the relevant planning unit, as defined by the red line as amended, for the required ten year period since 17 November 2006. In particular, his admission that it was moved to its present position after land to the east was sold in 2009 is pertinent. Therefore, the appeal on ground (d) must fail for this reason as well.
17. On a third point, the fact that a site is shown for 1995 is confusing and contradictory, as the appellant clearly states that he recollected buying a 36-foot (10.97m) caravan from Bridlington Caravans in 1996. This introduces an element of uncertainty and ambiguity which does not assist his case.
18. I have, however, also considered the letters and statement submitted by the appellant. He states that the caravan was bought in 1996 and hired to a young lady who was, at that time, renting a one acre (0.40 ha) paddock to the west of Alder Lodge for use with horses she owned. A photograph of the caravan, dated 1998, is also submitted. In 1999 the caravan was rented to Mr James Peacock and his son until the early part of 2009. Mr Peacock was employed as a caretaker at St Peters School in York. After this the caravan was rented to Dr Laycock who stayed on a regular basis in connection with an aircraft he kept at Full Sutton airfield. In 2011 the caravan was then rented to four contract workers including Mr Tony Walker for a continuous period of six months. He and his son presently occupy it "almost continuously" from Monday to Friday every week, paying a sum to cover the cost of electricity.

19. In support of this statement, the appellant has produced five letters. Mr Anthony Walker, the current occupier and a contract worker on behalf of Yorkshire Water, confirms he has known the appellant for about five years and that he and his son stay in the caravan for a nominal fee to cover electricity, on three or four days a week, and for one in every six weekends. Mrs L Gray, a nearby landowner, states that there has been a static caravan on the site since 2003. Mr R Ogram, a local landowner and gamekeeper confirms that the appellant had a caravan occupied by Mr Peacock on his land in 2002. Jean Atkinson, a neighbour, confirms that the appellant has had a static caravan on his land from the time she moved to Westfield Farm in 1998. Finally, David and Vivien Wright, nearby residents, confirm that there was a static caravan on the property in early 2000, when it was occupied for holiday purposes by Dr and Mrs Laycock.
20. The letter from Mr Walker provides some support for a case that the caravan has been occupied by contract workers on a regular basis since about 2011, and is so used at the present time. In this context, the fact that it may only be used for three or four days a week does not weaken the case, as it seems to me to be unlikely that the caravan is used for other purposes when the current occupiers are not staying in it.
21. The other letters, however, give little information about usage of the caravan prior to 2011, other than that from Mr and Mrs Wright who simply say that it was occupied for holiday purposes in 2000, albeit that this date does not coincide with the date when the appellant says that Dr Laycock used it. Moreover, the appellant has produced no documentation evidence such as contracts or rental agreements, or even evidence of regular payment for electricity or other services, and the degree of usage in the period prior to 2011 is therefore uncertain at best. The evidence also does not show a continuity of use, as the time periods between the various occupiers is unclear and it may well be that the caravan was simply stored on the land during any gaps in occupation. It is also apparent, as discussed above, that the caravan was moved around this, and adjoining, land.
22. In all of the above circumstances I conclude that the appellant has not met the required burden of proof and shown, on the balance of probabilities, that the caravan has been sited within the relevant planning unit and used continuously for residential purposes for short-term letting for the relevant ten-year period. The appeals against the Council's refusal of a CLEUD and on ground (d) therefore fail.

Other Matters

23. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of these appeals.

Conclusions

24. In respect of Appeal A, for the reasons given above, I conclude that the Council's refusal to grant a CLEUD in respect of the siting of a residential caravan for short term letting 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.

25. With regard to Appeal B, for the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

FORMAL DECISIONS

Appeal A: APP/E2001/X/16/3157950

26. The appeal is dismissed.

Appeal B: APP/E2001/C/16/3162243

27. The enforcement notice is corrected by:

- (a) The deletion, in Section 2, of the word "Feofee" and the substitution therefor of the word "Feoffee";
- (b) The deletion, in Section 3, of the words "change of use of land for the siting of a caravan used for residential purposes" and the substitution therefor of the words "material change of use of the land from agricultural use to a mixed use of agriculture and use for the siting of a caravan used for residential purposes in the location marked in blue on the plan attached to this decision";
- (c) The deletion of Section 5 in its entirety and the substitution therefor of the following requirements:

"5. WHAT YOU ARE REQUIRED TO DO

Cease the use of the land for the siting of a caravan used for residential purposes, disconnect the caravan from all utilities and remove the caravan from the land edged red on the plan attached to this decision".

- (d) The substitution of the plan attached to this decision for that attached to the notice.

28. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Martin Joyce

INSPECTOR



Plan

This is the plan referred to in my decision dated: 16 March 2017

by **Martin Joyce DipTP MRTPI**

Land at Alder Lodge, Feoffee Lane, Yapham, Pocklington, East Riding of Yorkshire YO42 1PF

Reference: APP/E2001/C/16/3162243

Scale: Not to scale

