The Planning Inspectorate

# Appeal Decisions

Site visit made on 10 January 2017

**by Chris Preston BA(Hons) BPl MRTPI**

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

**Decision date: 11 April 2017**

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**Appeal A: APP/Q9495/C/16/3149120**
**Appeal B: APP/Q9495/C/16/3149121**
**Deers Leap, Millside, Witherslack, Grange over Sands, Cumbria LA11 6SG**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Ian Parker and Appeal B by Mrs Tina Taylor-Parker against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice, numbered E/2015/0177, was issued on 23 March 2016.
- The breach of planning control as alleged in the notice is: Without planning permission, material change of use of land for siting a twin unit caravan used for residential purposes.
- The requirements of the notice are: (1) Permanently cease the residential use of the caravan; and (2) Permanently remove the twin unit caravan from the Land.
- The period for compliance with the requirements is six months after the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2) (d) and (e) of the Town and Country Planning Act 1990 as amended.

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**Appeal C: APP/Q9495/X/16/3148383**
**Deers Leap, Millside, Witherslack, Grange over Sands, Cumbria LA11 6SG**

- 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 Ian Parker against the decision of Lake District National Park Authority.
- The application Ref 7/2016/5013, dated 30 December 2015, was refused by notice dated 10 March 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 the use of caravan as a permanent dwelling (including associated land).

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## Decision

## Application for costs

1. Applications for costs have been made by Mr Ian Parker against the Lake District National Park Authority and by the Lake District National Park Authority against Mr Ian Parker. Those applications are the subject of separate Decisions.

## Procedural Matters

2. Two appellants were named on the appeal form in relation to the appeal against the service of the enforcement notice; Mr Taylor and Mrs Taylor-Parker.

It is common practice for the Planning Inspectorate to identify a separate appeal reference in relation to each appellant because, in effect, two appeals have been submitted. I have identified the appeals as Appeal A and Appeal B in the banner heading above. The grounds of appeal are identical in relation to both.

3. Appeal C was submitted by Mr Parker against the Council's decision to refuse an application for a Certificate of Lawful Use (CLU). In effect, the issues in relation to that appeal are very similar to those for consideration under ground (d) of the enforcement notice appeals. The parties do not dispute that the siting and use of the caravan for residential purposes amounts to a material change of use of land. The point in dispute is whether the caravan has been in use for residential purposes for a continuous period of ten years, from the date of the breach, that being the point after which no enforcement action may be taken having regard to the terms of s171B(3) of the Town and Country Planning Act 1990 (the Act).

4. For a CLU appeal, the appellant needs to demonstrate, on the balance of probabilities, that the use had continued for a minimum period of ten years, at the point the CLU application was made which, in this case was 30 December 2015. In relation to the ground (d) appeals the relevant period relates to the is ten years from the date at which the enforcement notice was served, which was 23 March 2016. Notwithstanding the differences in that respect, the grounds of appeal are similar and, for ease of reference, I have considered the enforcement notice appeal and the CLU appeal together within a single decision letter.

5. The appeals were initially scheduled to be determined by way of a Public Inquiry on 10 January 2017. However, once the respective proofs were exchanged, both parties contacted the Planning Inspectorate to indicate that they considered that the written method would be appropriate, having regard to the nature of the evidence. Having consulted with the parties I agreed to that approach and undertook an accompanied site visit on 10 January 2017. Following that visit, the appellants submitted what was referred to as a 'rebuttal proof of evidence' from the agent, Mr Coates, along with a number of appendices. After seeking the views of the parties I agreed to accept the late evidence and to continue to determine the appeals by way of the written procedure. In the interests of fairness I also accepted comments from the Council on the late evidence, including an application for costs. I am satisfied that the information before me is sufficient to make my decisions. As set out above, the applications for costs will be covered in separate decisions.

## Appeals A and B on Ground (e)

6. An appeal on ground (e) is made on the basis that the notice was not properly served, as required by section 172 of the Town and Country Planning Act 1990 (the Act). Section 172(2) of the Act requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land. In this case, the appellants do not dispute that the notice was served on the owner and occupier but state that it was also served on the National Westminster Bank, despite their contention that the Bank had no interest in the land on which the caravan is sited.

7. No documentary evidence has been provided in support of that claim and the Council has provided details of a Land Registry search dated 19 August 2015 which appears to show that there is a registered charge on the land which would indicate that the National Westminster Bank PLC had an interest in the land at that point in time. In any event, whether that is the case or not, the purpose of s172 of the Act is to ensure that all owners, occupiers and those with an interest in the land are served with a copy of the notice such that they are aware of proceedings and the right of appeal. Even if the notice was served on an additional party with no interest in the land I am satisfied that there has been no prejudice on the part of the appellants. It is not a case where an interested party has been prejudiced by a failure to serve a copy of the notice.

8. Consequently, the evidence before me indicates that the notice was correctly served and, even if that is not the case, service on the National Westminster Bank PLC has not caused any prejudice. Accordingly, the appeals on ground (e) fail.

**Appeals A & B on Ground (d) and Appeal C**

9. An appeal on ground (d) is made on the basis that, at the time the notice was served, it was too late to take enforcement action against the alleged breach of planning control. As set out above, the relevant period for a material change of use of land for residential purposes is ten years, from the date of the breach, as specified by s171B(3) of the Act. When making an appeal on ground (d), or against the refusal to grant a CLU, the onus is on the appellant to demonstrate his/her case. The relevant test is the balance of probabilities.

10. The Planning Practice Guidance (PPG) states that 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 an application (for a CLU), provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. The same principle applies to enforcement cases.

11. In this case, Mr Parker has submitted a statutory declaration in which he sets out a timeline of events. According to the declaration he purchased a barn at Black Bull Farm in 1998 and began the process of converting it into a dwelling in the same year. He states that a static caravan was placed in the garden and that he and his family lived in the caravan whilst the conversion was taking place, until 2000 when he states that the caravan was moved to the woodland to the rear of the garden. He states that the caravan was then replaced with the current twin unit caravan in late 2003 or early 2004 and contends that he moved into the unit when he separated from his wife in 2003 and that he has lived there ever since.

12. There are inconsistencies between the version of events provided within the statutory declaration and the other evidence provided by the appellants. An invoice for the delivery of a twin unit caravan to Black Bull Barn is dated 22 March 2004, which is after the point at which Mr Parker indicates that he moved into the unit in 2003. The declaration does not make clear if Mr Parker lived in the former unit, when that unit was removed, or whether there was any break in occupation between the point at which the former unit was removed and the current unit brought onto site.

13. In a letter to the Council Tax department, dated 01 June 2015, Mr Parker stated that he had lived in 'the lodge' since April 2004 and that, prior to that point, the lodge had been used as an office, since June 1998. He also states that he had made enquiries over the years with regard to Council Tax but had been told that it was unnecessary to register the unit as it was in the curtilage/ garden of Black Bull Barn. Thus, that letter, which is very specific in terms of stated dates of occupation, presents a different timeline of events to the statutory declaration. The letter would also appear to suggest that the same unit or lodge had been on site since June 1998 and no reference is made to a caravan being replaced or being moved from the garden/curtilage of Black Bull Barn to the woods at the rear. The present location within the woods is clearly outside the garden or residential curtilage of the property.

14. In addition, a pro-forma letter signed by a number of local residents suggest that the caravan was moved onto a hardstanding within the woods in 2000 but those residents appear to be unaware that the unit was replaced with a different unit at some point in time. Certainly, the letter makes no reference to the unit being replaced, as suggested within the statutory declaration.

15. The declaration also suggests that 'a Lake District Park Authority Officer' visited the property in 2003 regarding a tree house, cabin, use of the yard and the caravan. However, the Council has produced a file note of a site meeting dated 05 May 2004, after the caravan was allegedly brought onto site according to the appellant. It is a detailed note and I have no reason to doubt its accuracy. The site meeting was arranged to discuss various developments, including the erection of two outbuildings, the possible creation of a new access track, the possible extension of domestic curtilage into woodland and the erection of a tree house. No reference is made to a caravan.

16. The officer noted that there were two ways of accessing the outbuildings, which were used to store cars and motorcycles, either from the main entrance to the house or by driving round through the wood. The access track through the wood is the same access that presently serves the caravan. If the officer walked across the site and along the access, as appears to have been the case judging by the detail in the file note, I consider that it would have been very likely that the officer would have noticed a twin unit caravan in the position of the current unit.

17. Having viewed the site, the access track, the outbuildings and the tree house, I find it would be almost impossible to miss the presence of the caravan. Given that point, and the fact that the meeting was arranged to discuss possible breaches of planning control, I find the lack of reference to a caravan a surprising omission and one that would lead me to question whether a caravan was, in fact, in situ as of May 2004. Following the visit to the site the Council wrote to Mr Parker on 25 May 2004 to confirm that no further action would be taken with regard to the outbuildings and extension of domestic curtilage. Again, there is no reference to a caravan within that letter which, to my mind, would be surprising if a caravan had been noted at the site visit.

18. Therefore, I find that there is substantial ambiguity and inconsistency in the information before me with regard to the precise dates and sequence of events. The information provided by the appellant is inconsistent of itself and is contradicted by the site note provided by the Council.

19. Moreover, in addition to the lack of clarity as to the timeline of events, very little is provided in relation to how the unit/ units were occupied. For example, no utility bills or council tax bills have been submitted that would support the assertion that the unit was occupied independently of the main dwelling. Reference is made to the attempts of Mr Parker to have the caravan independently registered for Council Tax purposes. However, that suggestion is not supported by the evidence provided. No formal record of any conversations with the Council Tax department is provided prior to 2015. As noted, the letter from Mr Parker to the Council Tax department, dated 01 June 2015, refers to previous advice that the caravan did not need to be registered because it was in the curtilage/ garden of Black Bull Barn. That casts doubt on the location of any caravan during the relevant ten year period.

20. An email from the Council Tax department[1] to Mr Long of the planning department provides a transcript of a note on the Council Tax account of Black Bull Barn relating to a conversation between Mr Parker and the taxation team on 03 February 2015. In that conversation he allegedly advised the Council that he had contacted them 'a while ago' to confirm that he lived in a caravan next to the house but used the kitchen in the main house for meals etc. A printed version of the Council Tax log has been provided by the appellant within his response to the Council's costs application and the entry for 03 February 2015 confirms the details of the Mr Parker's conversation with officers from the Council Tax department.

21. The current unit has built in kitchen units with an integrated cooker and hob and, at the present time, has all of the facilities required for day to day living. However, it is difficult to ascertain whether that was the case during the suggested period of occupation. The cooker and other kitchen equipment such as the fridge, microwave etc. could all have been added at any point in time. If a kitchen was available it is not clear why Mr Parker suggested to the Council Tax department that he used the kitchen in the main house and took meals there. No satisfactory explanation has been provided on that point.

22. I note the assertion within the rebuttal proof of Mr Coates that Mr Parker suggested to Council Tax officers that he ate 'occasional' meals in the house in order to ease the effects on the children of the separation from his wife. However, that is not what is recorded in the contemporaneous log of the conversation which clearly states that he used the main house for the kitchen and meals. To my mind, that suggests something more than occasional dining. Given the inconsistencies in the evidence, I cannot conclude that the unit was occupied independently of the main house, or that it had all of the required facilities for day to day living from the point it was moved onto the site.

23. The entry in the log dated 11 August 2015 also indicates that Mr Parker told Council Tax officers in June 2015 that he had been living in the 'wooden chalet' for the last 2 years. An entry for 09 June 2015 confirms that Mr Parker was still registered to pay Council Tax at Black Bull Barn at that point in time. It is not clear why he would be registered at the property if he had moved out some 11 or 12 years previously, as indicated within the statutory declaration.

24. I note that other entries on the log record conversations where Mr Parker indicated that he had lived in a caravan since 2004. However, all in all, the Council Tax records and the other information presented identify a number of

[1] Attached at appendix I of Mr Long's proof of evidence

uncertainties regarding the exact point at which the unit was moved to its current location, the date at which it was occupied, whether there have been any breaks in occupation, and the degree to which it was used independently of the facilities within the house at Black Bull Barn.

25. The fact that the Council Tax department may have initiated action to recover Council Tax, backdated to 2004, does necessarily not amount to evidence that the caravan was occupied since that time. From examination of the records, it appears that the Council were only acting on information provided by the appellant in that regard. For the reasons given, that information is inconsistent and not sufficient to exercise the burden of proof required to demonstrate a case in planning terms.

26. Therefore, there is significant ambiguity in the information before me. The evidence provided by the appellant is inconsistent of itself and is contradicted by other information including the Council Tax records and the records of the Council's enforcement investigations in 2004. Consequently, the appellants have not demonstrated, on the balance of probabilities, that a caravan, or more than one caravan, had been sited on the land and used for residential purposes continuously for a period of ten years or more at the point at which the CLU application was made, or the point at which the enforcement notice was served.

27. For those reasons, I conclude that the Council's decision to refuse to grant a CLU was well-founded and that Appeal C should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act, as amended. Similarly, the appellants have failed to demonstrate, on the balance of probabilities that the use was lawful at the time the enforcement notice was served and I shall dismiss Appeals A and B on ground (d) and uphold the enforcement notice.

*Chris Preston*

INSPECTOR