

Appeal Decision

Inquiry held on 4 April 2017

by **B M Campbell BA(Hons) MRTPI**

Decision date: 02 June 2017

Appeal Ref: APP/K2420/X/16/3143504

Land to the north of Newtown Linford Lane, Groby, Leicestershire LE6 0FF

- 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 Arthur McDonagh against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 15/00933/CLUE, dated 24 August 2015, was refused by notice dated 2 November 2015.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
 - A certificate of lawful use or development is sought for "existing dwelling house".
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Decision

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

Application for costs

2. At the Inquiry an application for costs was made for Mr McDonagh against the Council. This application is the subject of a separate decision.

Preliminary matters

3. Despite the address as written on the application form, I was advised at the inquiry that the road is Newtown Linford Lane and not "Newton".

Clarification of the terms of the application

4. Prior to the start of the inquiry, I asked for a note to be sent out to the parties indicating that I would be seeking clarification at the outset as to the terms of the application made. I considered that it was not perfectly clear from the documentation whether the application had been made under s191(1)(a) for an existing use or under s191(1)(b) for operations which had been carried out.
 5. The Advocate for the Appellant confirmed that a certificate was sought solely for the operations; that is the erection of a dwellinghouse under s191(1)(b) and not for the use as a dwellinghouse under s191(1)(a). I was asked to consider the appeal on that basis.
 6. The Council, however, had determined the application as one having been made under s191(1)(a) for use as a dwellinghouse; had at the time found the
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structure to be a caravan¹ with attachments rather than a dwellinghouse; and, on that basis, had found the use to be unlawful. Just before the inquiry commenced, however, it had withdrawn an associated enforcement notice² attacking that use and had confirmed that it was no longer arguing that there had been concealment.³ At the inquiry, it further accepted that the structure comprises a building and that the building had been in position for more than 4 years.

7. The Council argued that it would not be possible to continue with the inquiry without injustice since the Council's case had been prepared in order to defend its decision on the basis of residential use rather than operations. It was now being asked to face an entirely different case.
8. I ruled that I could and would continue on the basis of an application made under s191(1)(b) for operational development as clarified for the Appellant. Firstly it is the Appellant's application and it is up to him to decide what it is he wishes to apply for – this is not a case of the decision maker deciding to modify the description or terms of the application in any way as is provided for in s191(4).
9. As was indicated in my pre-inquiry correspondence, I had been of the view that the application needed some clarification but that does not, in itself, mean that the application, once clarified, could not be considered. The evidence to be presented on the Appellant's behalf had not changed and had been with the Council for some time. That Authority would, therefore, have been well aware of the arguments which were to be pursued and that it would have to address at the inquiry. The Council's reference to caselaw regarding the need for precision in defining the terms of any certificate issued is not relevant here where what was needed was the Appellant to clarify precisely what it was he was applying for.
10. In addition, the Council's position had fundamentally changed only three working days before the inquiry opened and well after its evidence had been submitted so that it would, in any event, be presenting a significantly different case. Given that for operational development, the relevant period for lawfulness is four years as opposed to the ten years (which the Council had been considering) and that, even though addressing the use, the Council had clearly had regard to what had historically been on the site; there was nothing to indicate that the Council could not present its case on the application in the terms clarified without injustice arising. Moreover, if, at any time during the inquiry, an issue did crop up which a party had not had sufficient opportunity to consider, I had the power to adjourn at that point should there be any question of prejudice.
11. Similarly, continuing with the inquiry would not prejudice any interested persons as they too would have been able to view the Appellant's evidence before the event and would know what arguments were being put. The relevant four year timescale would not be problematical as, if ten years had formerly been addressed, the four now relevant would have been covered notwithstanding that it is the building rather than the use which is to be assessed.

¹ Twin unit although in reality the structure incorporates only a single unit caravan

² The subject of appeal Ref: APP/K2420/C/16/3143502

³ Letter dated 30 March 2017

12. In summary, following the clarification as to what was being applied for, I could find no injustice arising from continuing with the inquiry and certainly no reason for refusing to issue a LDC per se. At worst, had injustice been found, the inquiry would have needed to have been adjourned to allow the parties time to address the relevant matters, and that could have occurred at any time during the proceedings had a problem become apparent to me or been drawn to my attention by any party (including any that might have arisen from the Council's late change in stance).
13. Following that ruling, and during the luncheon adjournment, the Council took the opportunity to review its position. On the basis that the evidence of the Appellant was sufficient to demonstrate on the balance of probability that the erection of a dwellinghouse had been substantially complete more than four years before the time of the application; and that the Council had no evidence of its own, or from others to contradict or otherwise make the Appellant's version of events less than probable; the Council conceded and indicated that it no longer wished to contest the appeal. Interested persons, although expressing disquiet, also confirmed that they did not wish to continue to oppose the appeal. However, having regard to the degree of confusion arising from the answers given in the original application form, I was asked to ensure in any LDC granted, that it was made clear that the certificate addresses existing operations and not existing use. That seems to me to be an acceptable way forward.
14. 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 erection of an existing dwellinghouse was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr M Rudd of Counsel, instructed by Ms R Reed, Green Planning Studio Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr K Garvey of Counsel, instructed by M Rice, Solicitor to the Council

INTERESTED PERSONS:

Councillor P Batty	Groby Parish Council
Councillor L O'Shea	Leicestershire County Council
Councillor M Cartwright	Hinkley & Bosworth Borough Council
Councillor E Hollick	Groby Parish Council and Hinkley & Bosworth Borough Council

DOCUMENTS submitted at the Inquiry

- 1 Letter of notification of the inquiry and list of persons notified
- 2 Signed statement of common ground
- 3 Witness statement from Mr S L Brown
- 4 Statements from 4 local people submitted for Groby Parish Council
- 5 Four signed witness statement submitted for the Appellant
- 6 Documents from Magistrates Court proceedings, 7 October 2016
- 7 Submission on behalf of the Council
- 8 Closing submission for the Appellant

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 24 August 2015 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations were lawful because:

- a) No enforcement action could be taken in respect of them because the time for taking enforcement action had expired – the operations were substantially complete more than four years before the time of the application (s171B(1)); and
- b) The operations do not constitute a contravention of the requirements of any enforcement notice in force

B M Campbell

Inspector

Date: 02 June 2017

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First Schedule

Operational development comprising the erection of a dwellinghouse (as shown on drawing 15_686_003A)

Second Schedule

Land to the north of Newtown Linford Lane, Groby, Leicestershire LE6 0FF

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and in response to an application made under Section 191(1)(b).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date. It does not address the lawfulness of any existing use of the building for which an application under s191(1)(a) would be necessary.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 02 June 2017

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Not to scale

