
Appeal Decision

Site visit made on 28 June 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 12 July 2017

Appeal Ref: APP/R0660/X/16/3165433

Maple Farm, Strawberry Lane, Wilmslow SK9 6AH

- 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 David Ellerby against the decision of Cheshire East Council.
 - The application Ref 15/5808M, dated 22 December 2015, was refused by notice dated 23 September 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 is sought is described on the application form as: The use of the land for the stationing of one residential caravan.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application, as initially submitted to the Council, included a site location plan at a scale of 1:2500 denoting the extent of the land to which the application relates. In effect that encompassed the entirety of the land within the appellant's ownership, including the various buildings and paddocks to the north of Strawberry Lane. Following discussions with the Council a revised site location plan, at a scale of 1:1250, was submitted showing a reduced area for the application site. The boundary was more tightly drawn to include the buildings within the appellant's control and the land immediately surrounding them. The application was determined on the basis of that plan. For the avoidance of doubt, my decision also relates to that plan because that formed the basis upon which the application was determined.
3. Reference has also been made to the fact that the caravan was moved to a different part of the site after the application was submitted. When an application for a Lawful Development Certificate (LDC) is submitted the question is whether the use or development would have been lawful on the date the application was submitted. The fact that the caravan was moved after the relevant date has no impact on my decision because the question I must consider is whether the use would have been lawful at the point the application was made.

Main Issue

4. An application for a lawful development certificate is not an application for planning permission. As such, the planning merits of the development for

which a certificate is sought are not relevant to my decision. The main issue in the determination of the appeal is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

5. The Planning Practice Guidance (PPG) makes clear that an applicant is responsible for providing sufficient information to support an application for a certificate of lawful use. Further, in the case of applications for 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.
6. The description of the use for which a certificate was sought was described on the application form as "the use of the land for the stationing of one residential caravan". The same description was used by the Council within the decision notice. There appears to be no dispute that the caravan in question fell within the definition of a caravan, for the purposes of the Caravan Sites and Control of Development Act 1960 (the CSCD Act), such that it did not constitute a building operation for planning purposes.
7. Stationing a caravan on land is not necessarily an act of development for which planning permission is required; the question is whether there has been a material change of use of the land. For example, a caravan brought onto a farm and used for the storage of animal feed would not involve a material change of use and, hence, no development requiring planning permission would have taken place. If that caravan were subsequently lived in then a material change of use from the land from agriculture to residential use would have occurred. Therefore, it is not the siting of the caravan that determines whether a material change of use occurred but the relevant question is how the caravan was used.
8. In this case the application form described the development for which an LDC as sought as "the stationing of one residential caravan". The CSCD Act notes that land on which a caravan is stationed for the purpose of human habitation is a caravan site. Having read the respective statements it seems to me that the appellant put forward the application on the basis that the caravan had been used as an independent residential unit. If that was the case, a material change of use of the land to use as a caravan site would have occurred.
9. Section 191(2) of the Town and Country Planning Act 1990 (the Act) states that uses and operations will be lawful at any time if:
 - a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
10. Subsection (a) relates, in part, to the terms of s171B of the Act which specifies the timescales within which enforcement action must be taken. For a material change of use of land, no enforcement action may be taken after the end of the

period of ten years beginning with the date of the breach. Therefore, for an LDC to be awarded it is necessary for the appellant to demonstrate that the land in question has been used as a caravan site for a period of ten years, following the date of the breach of planning control.

The Site

11. As set out above, the site location plan was amended during the consideration of the application. The land to which the application relates excludes the area occupied by Orchard House (formerly known as Maple Farm) but includes the area covered by the new dwelling within which Mr Ellerby and Ms Stokes now live, the site of another dwelling which is currently under construction, a number of other outbuildings, as well associated land, including the paddock to the side of Orchard House within which the caravan was formerly sited.
12. The site has a complex history. In 2005, planning permission was granted to replace the dwelling then known as Maple Farm with a new dwelling¹. Up until that point it would appear that Maple Farm and its associated barns and outbuildings was a single planning unit. The appellant, through reference to advice provided by David Manley QC, maintains that the single planning unit became two planning units on the grant of that planning permission. That advice was provided with reference to a site location plan which depicted the new dwelling with an associated storage building and garden area².
13. Orchard House has now been sold by Mr Ellerby and is undoubtedly used as a separate unit of occupation surrounded by a clearly defined curtilage, separated from the rest of the site by boundary fencing. It is not clear when that fencing was erected. However, the sale of the property took place relatively recently in January 2015 and I am not satisfied that the land was split into two planning units prior to that point in time.
14. When the replacement dwelling was constructed in 2006 to 2007 all Mr Ellerby had done was replace one dwelling with another whilst retaining control of the rest of the site. The new dwelling was initially occupied by Mr Ellerby and Ms Stokes and there is nothing to suggest that the overall use of the land had changed. Mr Ellerby still lived at the site and retained control of the same land and buildings he did prior to the replacement dwelling being built. The house was in broadly the same position as the previous house.
15. I note that the red line boundary of the application for the replacement dwelling was drawn quite tightly around the house and garden but that boundary simply denoted the extent of the application site. To my mind, the way in which the land was used is the determining factor in whether a new planning unit had been created rather than the position of a red line on a plan submitted with the planning application. In this case there is nothing to indicate that there was any significant change in the relationship between the new dwelling and the rest of the site, when compared to the relationship of the old dwelling and the rest of the site. The only change appears to be that one dwelling was replaced with another.
16. Consequently, until the dwelling was physically separated from the rest of the site and sold as a separate unit of occupation to different owners in 2015 it is not clear that a new planning unit had been formed. The information that has

¹ LPA reference 05/1274P

² Plan No. 1154/3

been presented does not show that to be the case. At the point at which the caravan was brought to the site, in May 2005 according to the various statutory declarations presented, it seems likely that the land was still a single planning unit.

17. The definition of the planning unit is important when determining whether a material change of use has taken place on the land. The appellant maintains that the land to which the application relates i.e. the area excluding Orchard House, is a single planning unit and the LDC is sought on the basis that the use of the entirety of that land for the siting of a caravan for independent residential use (as a caravan site) is lawful. For the reasons given, I am not satisfied that there was any significant change in the planning unit in 2005 as a result of the grant of planning permission for the replacement dwelling. In other words, the appellant has not demonstrated that the land defined by the current application site boundary became a separate planning unit at that point in time.
18. Even if the caravan was used to provide independent residential accommodation from 2005 onwards, as suggested by the appellant, I am not satisfied that the material change of use covered the entirety of the land within the application boundary. As noted, the land includes outbuildings and barns that were associated with the use of Orchard House. There is nothing to indicate that the link between those buildings and the residential use at Orchard House altered after 2005. Consequently, it would appear that those buildings were still in use in association with the residential use of Orchard House at the point the caravan was brought onto the land. Whether the site and buildings were still in use for agricultural purposes is not clear.
19. Moreover, a number of planning permissions have been granted in relation to buildings situated within the application boundary and the effect of those permissions may have altered the status of the land in planning terms. In particular planning permission has been granted to create dwellinghouses on the site of two barns, referred to as Barn A and Barn B. Various planning applications in relation to those barns were submitted from 2012 onwards. One of those dwellings has been completed and is now the home of Mr Ellerby and Ms Stokes. The other was under construction at the time of my site visit. It is probable that the creation of those two dwellings has created a new chapter in the planning history of the application site through the creation of new residential planning units.
20. Planning permission was granted in respect of the two dwellings in 2012 which is clearly less than ten years from the date the caravan was brought onto the land. Thus, if the implementation of those permissions resulted in a new chapter in the planning history of the site and a change in the use of the land then appellant could not demonstrate that the entirety of the land within the application boundary has been used as a caravan site for a continuous period of ten years.
21. In any event, there is nothing to suggest that those former agricultural buildings and the land immediately surrounding them have ever been used for residential purposes as a caravan site. Their use prior to the work to create new dwellinghouses appears to have been in association with the dwelling at Orchard Farm and not in relation to use as a caravan site. Thus, if the caravan was used to provide independent residential accommodation it seems to me

that the material change of use took place on the discreet area of land on which the caravan was situated and not in relation to the wider area covered by the application boundary. In effect, the land upon which the caravan was situated would have formed a distinct planning unit. I concur with the Council in that regard³ and the appellant has not demonstrated, on the balance of probability, that a material change of use to use as a caravan site occurred over the entirety of the land in question.

22. Therefore, regardless of how long the caravan had been occupied as an independent residential unit, it would not have been appropriate for the Council to issue an LDC for the use of the application site as a caravan site because large parts of the land to which the application relates had not been used for that purpose.

The Use of the Caravan

23. Sworn statements from Mr Ellerby, Mr Reilly and Mr Paton indicate that the caravan was brought onto the land and that Mr Ellerby was living in the unit by August 2005. Although no corroborative evidence has been provided I have no reason to doubt their statements in that regard. The appellant has suggested that the caravan was brought to site in May 2005. However, the mere siting of the caravan would not necessarily have involved development and the material change of use would have occurred when the unit was occupied for residential purposes. The statements suggest that was around August 2005.
24. Whether the occupation of the unit would have amounted to a breach of planning control at that time is not clear. Mr Ellerby was apparently living in the unit whilst work was being undertaken on the construction of a new dwelling directly adjacent to the area where the caravan was sited.
25. The Council has indicated that the occupation of the caravan at that time may have fallen within the scope of permitted development rights under Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order (GPDO). The Council has referred to the 2015 version of the GPDO but the relevant provisions at the time would have been contained within the now superseded 1995 version. Class A of Part 4 permitted the provision on land of buildings, movable structures, plant or machinery required temporarily in connection with and for the duration of operations being carried out on that land or adjoining land.
26. Although a caravan may fall within the definition of a movable structure, Class A did not permit the use of a movable structure for residential purposes. The temporary use of land is covered by Class B of Part 4. The use of land for a caravan site was not permitted under the terms of paragraph B.1(b). Consequently, I am not satisfied that the occupation of the caravan by Mr Ellerby during building works would have been permitted under the terms of Part 4 of the 1995 GPDO.
27. However, permitted development rights for the use of land as a caravan site were set out in Part 5 of Schedule 2 of the 1995 GPDO. The use of land as a caravan site was permitted providing that it was used in line with the circumstances referred to at paragraphs 2 to 10 of Schedule 1 of the CSCD Act. Paragraph 9 of that Schedule refers to the use as a caravan site of land

³ Having regard to the principles established in *Burdle v Secretary of State for the Environment* [1972] 3 All ER240

forming part of or adjoining land on which permitted building or engineering operations are being carried out, where accommodation is for people employed in connection with the operations. Thus, if the caravan was occupied by a person or persons employed in the construction of the adjacent dwelling the occupation would have complied with the terms of Part 5 of the GPDO.

28. What is not clear is the extent to which Mr Ellerby was engaged in the work to construct the dwelling and, thereby, the extent to which he could be said to be employed in those operations. Paragraph 3.4 of the appeal statement submitted on behalf of the appellant states that 'Mr Ellerby commenced work on the construction of the dwelling immediately on the grant of planning permission but then stopped until amendments were approved'. The term 'Mr Ellerby commenced work' could be read to imply that he was engaged in the building activity himself.
29. If that was the case it is likely that the occupation of the caravan and the corresponding use of the land as a caravan site would not have amounted to a breach of planning control at that point in time. The use of the land as a caravan site would only have become unauthorised at the point at which the caravan was no longer lived in by a person not employed in connection with the construction of the adjacent dwelling. Mr Ellerby states that he moved into the newly constructed dwelling in November 2007.
30. I note reference within the various sworn statements to a delay in construction whilst amended plans were being considered. The precise extent of that delay is not clear. In any event, it seems to me that such periods may be considered to fall within a normal process of constructing a dwelling such that the continued occupation of the caravan during a short period of delay may well have been considered to fall within the scope of permitted development rights under Part 5 of Schedule 2 of the 1995 GPDO.
31. As noted, the onus rests with an appellant to demonstrate his case and, in this instance, there is a lack of clarity with regard to the occupation of the caravan and how that related to the construction of the adjacent dwelling. The application was submitted to the Council in December 2015. Consequently, if the occupation of the caravan was lawful up until November 2007 the requisite ten year period from the date of the breach of planning control would not have passed when the application was made.
32. Moreover, I find that the evidence provides a lack of clarity with regards to how the caravan has been used throughout the time it has been on site. The sworn declarations of Mr Ellerby and Ms Sarah Stokes suggest that Mr Ellerby's son and now daughter-in-law lived in the caravan for a 'several months' from November 2007 whilst waiting for the completion and renovation of their new home and again between July and December 2010 whilst their home was being renovated. Reference is also made to twice yearly visits by Ms Stokes' parents who have, according to the sworn declarations, stayed in the caravan whilst visiting and house sitting for Mr Ellerby and Ms Stokes.
33. Evidence of use between those periods is limited. Mr Ellerby suggests that the caravan has been 'available for use by visitors at all times'. However, aside from the specific dates referred to with regard to his son and daughter-in-law and Mrs Stokes' parents no information has been presented to indicate how many visitors have stayed in the unit, how often those visits took place, how long people stayed, which facilities they utilised whilst staying in the unit or the

extent to which any visitors relied upon facilities within the appellant's adjacent dwelling. No supporting information such as photographs within the unit are provided to indicate what facilities were available within the caravan during the period it was stationed on the site or what condition it was in.

34. Mr Ellerby also states that *'visitors to the farm have stayed overnight in the caravan.'* That would indicate that the occupation in those instances was directly linked to a visit to the farm. To my mind it seems likely that visiting friends or relatives would eat meals and socialise with Mr Ellerby and/or Ms Stokes in the adjacent dwelling, as opposed to living independently within the caravan. It would make little sense to visit a friend only to isolate oneself in a separate unit of accommodation. The nature of that use seems somewhat different to a holiday home, to use the example provided by David Manley QC, because of the distinct emphasis on visiting friends. Thus, references to overnight stays in relation to visits to the farm would appear to indicate that those staying were using the caravan in a way that was ancillary to the use of the accommodation in the adjacent dwelling, whether that was Orchard House in the first instance or, more latterly, the converted barn known as Maple Farm.
35. The appellant's response to the Planning Contravention Notice (PCN) indicated that the use was for domestic purposes in association with the adjacent residential use. Mr Ellerby himself has referred to the use of the caravan for storage purposes. The caravan was sited beyond what may be described as the formal garden area of the dwelling and, as such, was likely to be beyond the residential curtilage. However, that, of itself, does not dictate that a use could not be ancillary to the use of the adjacent dwelling. In those circumstances the use of the land would, in effect, be an extension of the residential use associated with the adjacent dwelling. It seems to me that such a use would be distinct from use as a caravan site where the caravan was occupied as a separate independent unit of occupation, in which case a new planning unit would be formed.
36. Thus, the information before me does not present a picture of continuous independent residential occupation from the point at which Mr Ellerby moved into Orchard House in November 2007 up to the point at which the application for an LDC was submitted to the Council. It may be that the caravan was occupied independently, particularly during the two short periods of occupation by Mr Ellerby's son and daughter-in-law and possibly during the occasional visits by Ms Stokes' parents. However, even in those instances, very little information is before me to indicate precisely how the caravan was used or the extent to which that use took place in association with the use of the adjacent dwelling(s). There is considerable uncertainty in the evidence presented in that regard.
37. In addition, reference is made within the declarations to the use of the caravan for storage purposes in association with the adjacent dwellings. How often it was used in such a manner is uncertain from the information before me.
38. In providing his advice David Manley QC states that *'It is clear from my instructions that the use has not been ancillary to the use of Orchard House, ie occupants have lived, slept and eaten in the caravan and the caravan has therefore functioned as a free standing unit of accommodation. This is to be contrasted with a situation in which a caravan might be on land but meals,*

*bathing etc all took place in a proximate house. In that case the occupation would be ancillary to the occupation of the house.'*⁴

39. It is not clear to me if the information provided to Mr Manley QC is the same information that has been presented to me. The evidence before me provides a sketchy picture of how the caravan was used between November 2007 and the point at which the LDC application was made. It may be that it was used to provide independent residential accommodation at times during that period. However, in between those times it appears that the caravan was used for purposes ancillary to the adjacent dwelling(s), either for storage or ancillary accommodation. It may be that more than one material change of use occurred during the period in which the caravan was located on the land.
40. Given the lack of clarity described above the evidence does not demonstrate, on the balance of probability, that the site had been used as a caravan site for a continuous period of ten years at the point the application was made. Any periods of independent residential use were not continuous and appear to have been interceded with uses that were ancillary to the use of the adjacent dwelling.

Conclusion

41. The onus rests with an appellant to demonstrate his case in relation to an LDC. For the reasons I have set out I am not satisfied that the use for which an LDC is sought was ever carried on across the entirety of the application site. The planning history of the land within the application boundary also indicates that the use of parts of that land changed during the requisite ten year period, following the grant of planning permission for the creation of new dwellinghouses. I have also highlighted a lack of clarity with regard to the role that Mr Ellerby played in the construction of Orchard House, a factor that would determine whether the occupation of the caravan during that period was lawful. There is also a lack of clarity with regard to the precise way in which the caravan was used post November 2007.
42. For all of those reasons I find that the appellant has not demonstrated, on the balance of probability, that the use of the land for the stationing of a residential caravan (a caravan site) would have been lawful at the point the application was made. Accordingly, I conclude that the Council's refusal to grant a certificate of lawful use was well-founded and I shall dismiss the appeal.

Chris Preston

INSPECTOR

⁴ Paragraph 4 of advice dated 09 December 2015