
Appeal Decision

Inquiry held on 27,28,29 June 2017

Site visit made on 28 June 2017

by R J Perrins MA MCMI ND Arbor Tech ArborA

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

Decision date: 16 August 2017

Appeal Ref: APP/Y3940/X/16/3157020

**Long Meadow Nurseries, Breamore Road, Downton, Salisbury, Wiltshire
SP5 3HW**

- 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 & Mrs A Ghasemi against the decision of Wiltshire Council.
 - The application Ref 15/10837/CLE, dated 31 October 2015, was refused in part by notice dated 10 June 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 land for a mixed use comprising of a residential dwelling, retail, the stationing of caravans for residential purposes and the use of land for horticulture/agriculture.
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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 proposed use which is considered to be lawful.

Procedural Matters

2. All of the oral evidence was given on oath or by sworn affirmation. A signed Statement of Common Ground (SCG) was submitted at the Inquiry setting out the agreed site description, matters of agreement and matters of disagreement. The Inquiry sat on the 27,28 and 29 June with the site visit being carried out on the afternoon of the 28 June.
3. The appeal concerns the legality of the use and for the avoidance of doubt arguments concerning planning merits and planning policies are not for my consideration under this appeal. In the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate, my decision rests on the facts of the case, and on relevant planning law and judicial authority.
4. The burden of proof rests with the appellants, the relevant test of the evidence being the balance of probability.

Background

5. The appeal site is situated in an area of countryside, south of Downton and accessed off the A338 Breamore Road. The site has an extensive planning history the most recent being the LDC application as set out above. That was determined by the Council on 10 June 2016. The determination granted a LDC in respect of the use of the land for agriculture/horticulture and the construction of a dwelling. Therefore those matters, as per the SCG, are not under dispute. Nevertheless, the decision notice sets out that the retail use and the stationing of caravans for residential purposes do not benefit from lawfulness. It is upon those uses that I will focus.
6. In that regard the Council are of the view that, in the first instance, they are prevented from considering these matters as lawful because of two enforcement notices concerning the land and dated 22 June 1973 and 9 March 1976. To that end s191(2) of the Act is clear in that if a notice is in force and the use being put forward for lawfulness contravenes the requirements of the notice then that use would not be lawful:

For the purposes of this Act uses and operations are 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.

7. Alongside that s180 of the Act needs to be considered, that sets out the effect of planning permission on an enforcement notice:

(1) Where, after the service of—

(a) a copy of an enforcement notice; or

(b) a breach of condition notice,

planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

8. There is no dispute that the notices embrace the land subject of the LDC application and this appeal. In the first instance, and before I set out the main issue in this case, I must consider whether or not either of these notices prevent the issue of an LDC in respect of the retail use or the stationing of caravans for residential purposes. It is to the notices which I now turn:

The Enforcement Notices

9. The 1976 notice alleges (in brief): *A timber building has been erected on the said land for use as a shop for retail sale of fruit, pot plants, flowers and mineral water.* It requires the removal of the said building from the land and to discontinue the contravening use.
10. The appellant argues that the building was removed; the notice is an operational development notice and sought to embrace the retail use of that

building and not the whole site. Evidence points to the building being removed and replaced with a much larger building and therefore the notice was complied with. It cannot be that the notice would then embrace a subsequent replacement building. Indeed the Council themselves stated that the building had been removed and replaced by further larger buildings but purported to take no action against these larger buildings.

11. Further the Council cannot use the notice to embrace other buildings that weren't in existence at the time the notice was served. Moreover, it is clear that the notice expresses the use associated with the building and not the land as a whole. In that light the 1976 notice cannot purport to prevent a lawful development certificate for the retail use of the site.
12. The Council are of the view that the 1976 notice remains in effect and it precludes a retail use of the site. That is to say it embraced both operational development and the retail use and that use was not confined to the building as the appellant suggests.
13. I have some sympathy with both parties with respect to interpretation of the 1976 notice. In particular the matters constituting the breach and the steps required to be taken. The breach is as set out above and the requirements are as follows:
 1. *Remove or secure the removal of the said building from the said land.*
 2. *Discontinue the contravening use.*
14. The argument that the requirement concerning the use was met when the building was removed may have some merit. In the alternative, the view that the use applied to the site as a whole and not just the building, given the wording of the breach, could also be open to debate.
15. However, the enforcement notice was appealed by way of an Inquiry in July 1976 and the report to the Secretary of State and the conclusions of the Inspector cannot be ignored. There is no dispute that the enforcement notice was upheld with a correction which is of particular significance to the arguments put forward by the parties. That correction was set out in the second part of paragraph 135 of the appeal:

"The second requirement, related as it is to the second alleged breach, should be deleted for the reason given in para. 130. To this extent the appeal on ground (f) succeeds"
16. Paragraph 130 sets out:

"As regards the second alleged breach, the change of use of the land from agriculture to use as the site of a shop, "use", in relation to land does not include the use of land for carrying out of any building operations thereon. I conclude that no breach of planning control is disclosed by the second allegation, and that to this extent the appeal on ground (b) succeeds."
17. There can be no doubt that the Inspector recommended correction of the notice such that it would no longer refer to discontinuance of the use. There is nothing before me to suggest that did not happen, the Council in the *Report of the District Planning Officer to South-East Planning Sub-Committee – 10 December 1986* sets out that the appeal was dismissed and the building was

subsequently removed. That is reflected in a letter from Salisbury District to Sherwins solicitors dated 22 June 1987. No mention is made of the use. Furthermore in the *Schedule of Main Events from 1955 – 1988* submitted by the Council the entry for 1 August 1977 says:

No sales taking place. Meeting at the site with Enforcement Office and Mr. and Mrs. Cooper (parents) who stated the Enforcement Notice only required the kiosk to be removed but did not prevent the strawberries from being sold.

18. Therefore, and without evidence to the contrary, the Inspector's report resulted in the enforcement notice being upheld with the correction. Thus, regardless of any arguments concerning the remainder of the report or what the ground (f) or ground (b) appeals sought to achieve, the inevitable outcome is that the retail use, even if it were embraced by the notice in the first place, no longer forms part of the corrected notice.
19. In that light the notice alleged the erection of a building and sought its removal. That was complied with. Any following retail use would not therefore have been in a contravention of any of the requirements of any enforcement notice then in force. Such a use could become lawful over time. To that end the Council accepted under cross-examination, and in closing, that should I find that there was not an enforcement notice in force to embrace the retail use then a LDC in respect of the retail use would be inevitable.
20. On the evidence before me I see no reason to disagree with that and find the retail use of the land, for the reasons set out above, was not in contravention of any enforcement notice. That use, as a matter of fact and degree, has subsisted uninterrupted for a period of 10 years or more and thus has become lawful overtime. I shall not consider this matter further.
21. Turning to the 1973 notice. The notice alleges: *The use of the land has changed from use for the purposes of agriculture to use as a caravan site within the meaning of Section 14 of the Caravan Sites and Control of Development Act 1960.* It requires the discontinuance of the contravening use and the removal from the said land of all caravans stationed thereon in connection with the contravening use.
22. In the first instance I must consider whether or not that notice is extant, the Council suggest that it is although the appellants have suggested there is some reason for doubt. They say that because the 1973 notice was also subject to an appeal. However there is no evidence before me to suggest that the appeal was heard. The appeal decision referred to above sets out that:

*"On 23 June 1973 the former Salisbury and Wilton District Council served an enforcement notice against the unauthorised stationing of a caravan. There was an appeal due to be heard on 13 August 1974 but it was postponed and held in abeyance pending the serving of the enforcement notice which was subject of today's inquiry. **The appeal was being treated as being withdrawn.**" (my emphasis).*
23. In addition the officer's report to the 1980 planning permission referenced below states:

"In the meantime the Department of the Environment had notified Mrs Cooper on the 29th August 1975 that unless they heard within 14 days of the date it would be assumed that the appeal was withdrawn. However no notification was

made therefore the enforcement notice for the removal of the caravan was, and is, valid.

24. There are also references in the *Schedule of Main Events*, also referred to above, which sets out that in July 1974 the District Council asked for deferment until the enforcement notice for the kiosk had been served. However, none of these matters are conclusive; the appeal may well have been treated as being withdrawn but there is nothing before me to suggest that it was. In the same way it has not been shown the Department of the Environment, as was, had the authority to assume an appeal had been withdrawn.
25. Therefore the argument that the appeal was never determined, such that the enforcement notice never came into effect, has little by way of evidence to give it any weight. In the same way there is no corroborating evidence to suggest the alternative that the appeal was withdrawn. In that light I simply have no option but to proceed on the basis that there is an enforcement notice in place and that it remains extant.
26. However, the site history includes a planning permission granted in June 1980 for the *siting of a residential caravan* (ref: S/1980/0545) for a period limited to 3 years. A temporary planning permission but planning permission nevertheless. There is no dispute that the permission in 1980 allowed use of the site for the siting of a residential caravan. The Council witness also accepted that there was no condition restricting the number of caravans and, such a use would not restrict the use of the site to the same caravan.
27. That approach reflects the authority of the *I'm Your Man*¹ and *Cotswold Grange*² judgments, the latter holding the principle that "if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition". *I'm Your Man* established the principle that the limitation of a use as set out in the description of a proposal in a planning permission was in itself unenforceable. For it to become effective, it had to be contained in a specific condition. Without such a condition, significant changes to the originally envisaged use can lawfully take place so long as its character remains the same.
28. Therefore no distinction can be drawn between what was granted planning permission in 1980 and the use embraced by the enforcement notice in 1973. In that light, the permission granted in 1980 was for the same use as that being sought today with regards to the stationing of caravans for residential use on the land. In that case s180 is germane and it provides that where a planning permission is subsequently granted for the same development, or for some part of it, the permission overrides the notice to the extent that its requirements are inconsistent with the planning permission, but the notice does not cease to have effect altogether.
29. Furthermore where a temporary permission is granted, the prohibition contained in the notice does not revive upon the expiry of the temporary permission; the notice does not go into a state of suspended animation like 'some latter-day Rip Van Winkle or Frederick Barbarossa', as confirmed in the judgment in *Cresswell*³. Whilst the Council suggest that this case is unlike

¹ *I'm Your Man v SSETR* [1999] 77 P&CR 251

² *Cotswold Grange Country Park LLP v SSCLG and Tewkesbury BC* [2014] EWHC 1138 (Admin)

³ *Cresswell v Pearson* [1997] JPL 860

Cresswell in that the force of the notice is not challenged or in doubt and that the temporary permission was for the benefit of Mr Gahsemi alone, I see no reason why the principle in that judgment should not apply.

30. A planning permission was granted, albeit it for a temporary period, and the 1973 notice ceased to have effect so far as inconsistent with that permission. Namely the stationing of caravans for residential use. Furthermore as set out in *Cresswell* it did not revive once the three year period had passed. At that point it was open to the Council to take action and they could have taken action against a breach of condition and they chose not to.
31. In that light therefore the 1973 enforcement notice ceased to have effect in respect of the use and cannot be used as a reason not to grant a LDC. Nevertheless the Council consider insufficient evidence has been submitted to establish 10 years continuous use for the stationing of caravans for residential purposes. It is to those arguments that I now turn.

Main Issue

32. For all of the above reasons there remains one main issue to consider; whether or not the continuous occupation of one or more caravans on site has subsisted for ten years or more.

Reasons

33. The Council accept that at least one caravan has been stationed on the land for a period in excess of ten years; the area of dispute is thus focussed on the continuous occupation. I accept the burden of proof lies with the appellants in such cases. Nevertheless, in *F W Gabbittas v SSE and Newham BC* [1985] JPL 630 the Court held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or 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".
34. The Council have submitted some evidence in respect of the use relating to the non-payment of Council tax, the lack of a licence for caravans at the site, along with a lack of persons being registered on the electoral roll. Dealing with the lack of a licence first, that would have been something that could not have been obtained in any event by the appellants since planning permission is required before a licence can be obtained. Furthermore it is not unusual, in such cases, for people to avoid registering for Council Tax for reasons that do not need to be rehearsed here. In addition there are many thousands of people not on the electoral role through their own choice. For these reasons these matters must carry very little weight; they do not contradict the appellants' evidence.
35. Turning to that evidence, I heard from a number of witnesses all giving evidence on oath or by sworn affirmation. I accept that it would have been helpful to hear from Mrs Ghasemi who, of the witnesses, has known the site for the longest. It is inevitable that her signed witness statement carries less weight given she chose not to give oral evidence. Although I have no reason to doubt that was borne out of hearing difficulties.

36. Nevertheless I found the evidence of Mr Ghasemi generally robust. He had no knowledge of the 1973 and 1976 notices but that is not unusual given he had no knowledge of the site until 1977. The Council suggest it is completely implausible that he would not have known about the 1980 planning permission but that does not reflect what was said at the Inquiry. Mr Ghasemi set out that he had been informed verbally regarding the permission; he had not seen the decision notice until 1986/87 when it was included in a bundle of documents relating to other proceedings.
37. In addition Mr Ghasemi was able to answer a number of questions concerning the evidence given by the other witnesses (which he had not heard) with some aplomb. Whilst at times he was seemingly confused over the 'planning detail' of the site he is not a planning professional and I found him to be a credible witness.
38. The other witnesses all set out that the site had been used for caravans for as long as they had known the site. Alongside that are a number of signed affidavits from others also pointing to a caravans being on the site continuously. I accept that some of the oral evidence should carry reduced weight; Mr Goodland had no knowledge of the site for significant periods, Mr Smith was also away for long periods.
39. However to suggest that Mr Gillard moved away some 20 years ago does not paint the correct picture. He did indeed move to Dorset but only 7 or 8 miles away from the site and continued "to pass by once or twice every week" and that he saw "2 static caravans and 2 mobile homes" regularly on the land. Mr Ayoka visited the site between 1992 and 1999 monthly and after that period once or twice per year. He could not specifically say that people were living in the caravans but there were always people there that he associated with the caravans.
40. Mr Fyfe who currently works in the shop was straightforward in his answers. Between 1995 and 2005 he cleaned caravans, a couple of days each week. Mr Ghasemi corroborated that and set out that Mr Fyfe was good at what he did and occupiers of the caravans also saw that and used him to clean their caravans as well. Mr Fyfe was mainly responsible for 4 or 5 caravans and they were more or less in the same place which he marked fairly quickly on a plan supplied to him during cross examination. He recollected a couple of names of those living on site but was not able to say for definite that people were living permanently on site; he was to my mind a plausible witness. One could also deduce that the fact that Mr Fyfe was used so regularly to clean caravans points to residential occupation occurring with some regularity.
41. It is correct to say that a number of the witnesses with long associations to the site did not know each other or the name of the postman that has delivered to the site for a number of years. However I fail to see how that should cast doubt on what they said under oath. It's not unusual for people not to know the name of the people who deliver their mail, the names of those living nearby, or those that you may only see in passing or as customers in a shop.
42. The Council also seek to suggest that the plans annotated by Mr Fyfe and Mr Ghasemi showing the positions of caravans on the site are materially different and indicate a variance and weakness in the evidence. It is clear that the 8 caravans marked for the period between 1995 and 2005 by Mr Ghasemi do not reflect the four marked by Mr Fyfe. However Mr Fyfe was asked to mark the

four caravans he was responsible for cleaning; they mirror the position of four static units that I saw on site. That was a different question to that asked of Mr Ghasemi who has not marked caravans in the same position in either the 1995 to 2005 period or from 2005 to the present day. One can infer from that (as those caravans that appear today appear to have been marked incorrectly) that Mr Ghasemi has not interpreted the drawing correctly. The drawings add limited weight to the Council's case.

43. In the same way the Council statement that a caravan didn't show any obvious signs of occupation at the time of inspection. I say that as it is apparent from the photograph taken at that time that the curtains were drawn. In addition from my own site visit I saw that when curtains are drawn it is not a sign of non-occupation as the caravan that I viewed, with drawn curtains, was clearly being occupied.
44. The evidence also includes a number of overhead photographs submitted by both parties which were put under some scrutiny and are as set out below.

Date	Indicates	Provided by
1987	Possible agricultural touring caravan on eastern boundary.	Appellant
17 June 2000 to 16 May 2002	Caravan (described by the council as Caravan 1) on northern boundary.	Appellant
26 April 2007	Caravan as above plus possibly two others	Appellant
26 May to 1 August 2013	As above plus one more	
Undated	Annotated photograph; as above plus four mobile homes reflecting what I saw on site	Appellant
2001	Caravan (described by the council as Caravan 1) on northern boundary.	Council
2005/06	The site, hardstanding and vehicles.	Council
2014	Reflects the 2013 photo above	Council

45. The photographs listed do not help in terms of demonstrating continuous occupation and none show the numbers of caravans referred to by the appellant. They do however show at least one caravan on the site throughout. There was some debate as to whether or not the 2005/06 photograph shows a caravan particularly on the northern boundary. Unfortunately it is not of a quality to draw a robust conclusion either way in terms of that. Although it does appear to indicate a caravan next to the rear boundary of the dwelling, where one can be seen today. Either way it is not conclusive and should carry little weight.

46. With regards to occupation, the appellants have set out extensive time lines of how many caravans were occupied and by whom. In the first instance for Mobile Home 1 between 1977 and 2012, and Mobile Home 2 from 1980 to 2012. Secondly a table sets out families who have stayed in touring caravans on the site. It was confirmed that Mrs Ghasemi drew up these lists and none of those mentioned in the list were called to give evidence save for Mr Smith who's evidence I have addressed above. The lists are largely therefore untested and must carry little weight.
47. In addition to this there is a general lack of paperwork concerning residential occupancy save for an agreement with Mr Connolly, which is corroborated by remittance advice documents from Salisbury Council. Nevertheless, given the nature of the occupancy, I have no reason to doubt that visitors either worked for their rent or paid in cash; that is not uncommon in such situations.
48. Drawing all of these matters together I have some sympathy with the Council in terms of the evidence that was before them. Nevertheless, whilst the onus is on the appellants to make out their case, there is no requirement for every time period accounted for to be supported with documentation in order for it to be accepted. In evidence, and under cross-examination, the appellant's recollection of events was clear on how the caravans had been occupied. He was able to recollect, on oath, personal circumstances of some of the occupiers and he had little difficulty recollecting names. Whilst at times the appellant appeared somewhat bewildered by the planning process I found him to be a credible witness and his recollection of such matters reflect that which one would typically expect for such a general pattern of use. That was supported by the oral evidence, also on oath, of other witnesses.
49. In the light of *Panton & Farmer*⁴ and *Thurrock*⁵ the period of 10 years use in breach of planning control has to be continuous before immunity from enforcement action and, thereby, lawfulness, is acquired. There is no dispute that at least one caravan has been stationed on the land for the requisite period and it is apparent, as a matter of fact and degree, that at least one caravan has been occupied over the period for residential purposes. I see no reason to disagree with the appellant's view that such an occupation, in respect of the mixed use being sought in the LDC application, commenced in 1987 when the dwellinghouse was completed on site.
50. The question as to "did that use continue" does not necessarily mean continuous occupation. Whether or not any break in continuity is significant, will be a matter of fact and degree in the light of the particular circumstances of each case. As set out above there is nothing before me to contradict the appellants' evidence or to suggest such a break had occurred such that at any point the Council could not have taken enforcement action. It's also of note that the one interested party points to an increase in caravans rather than caravans appearing on site for the first time.
51. The Council has brought no evidence of its own to contradict the appellants' version of events which I find to be sufficiently precise and unambiguous for me to be able to conclude as a matter of fact and degree, and on the balance of probability, that the use has continued without a material break for a period in excess of 10 years prior to the LDC application being made.

⁴ *Panton & Farmer SSETR & Vale of White Horse DC* [1999] JPL 461

⁵ *Thurrock BC v SSETR and Holding CA* [2002] JPL 1278

Conclusion

52. For the reasons given above I conclude, on the evidence now available, that the Council's refusal in part to grant a certificate of lawful use or development in respect of the use of land for a mixed use comprising of a residential dwelling, retail, the stationing of caravans for residential purposes and the use of land for horticulture/agriculture 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.

Richard Perrins

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr M Green	Instructed by the appellants
He called	
Mr Simon Goodland	
Mr Jamie Gillard	
Mr George Ayoka	
Mr Peter Smith	
Mr Jason Fyfe	
Mr Marco Barney	
Mr A Ghasemi	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr H Mohamed of Counsel	Instructed by Ms Dorcas Ephraim Wiltshire Council.
He called	
Mr Matthew Legge MA	Senior Planning Officer

DOCUMENTS

- 1 Notification letter
- 2 Copy of Staffordshire County Council v Basil John Challinor, Margaret Ann Robinson
- 3 Witness Statement – Simon Goodland
- 4 Witness Statement – Peter Smith
- 5 Witness Statement – Marco Barney
- 6 Drawing annotated by Mr Fyfe
- 7 Drawing annotated by Mr Ghasemi
- 8 Signed Statement of Common Ground
- 9 JPEL Case Comment *Conditional planning permission for dwelling AONB*
- 10 Copy of *Cotswold Grange Country Park* judgment

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 31 October 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:

The time for enforcement action had expired.

Signed

Richard Perrins.

Inspector

Date: 16 August 2017

Reference: APP/Y3940/X/16/3157020

First Schedule

The use of land for a mixed use comprising of a residential dwelling, retail, the stationing of caravans for residential purposes and the use of land for horticulture/agriculture.

Second Schedule

Land at Long Meadow Nurseries, Breamore Road, Downton, Salisbury, Wiltshire SP5 3HW.

IMPORTANT NOTES – SEE OVER

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 16 August 2017

by R J Perrins MA MCMI ND Arbor Tech ArborA

Land at: Land at Long Meadow Nurseries, Breamore Road, Downton, Salisbury, Wiltshire SP5 3HW.

Reference: APP/Y3940/X/16/3157020

Scale: Not to Scale

