



---

# Appeal Decision

Site visit made on 23 April 2018

**by Jessica Graham BA (Hons) PgDipL**

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

**Decision date: 13 June 2018**

---

## **Appeal Ref: APP/P1133/X/17/3181859**

### **Land adjoining Higher Woodway Road, Teignmouth, Devon TQ14 9NR**

- 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 Dr Vaughan Lancaster-Thomas against the decision of Teignbridge District Council.
  - The undated application Ref 17/01036/CLDE, received by the Council on 21 April 2017, was refused by notice dated 21 June 2017.
  - 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 existing use of land as a site for a caravan for human habitation.
- 

### **Decision**

1. The appeal is dismissed.

### **Background and Main Issue**

2. On 26 August 2010, the Council issued a LDC in respect of the appeal site ("the 2010 LDC"). This certified as lawful the "Existing use of land as paddock for non-commercial equestrian use, stabling and use of caravan for domestic storage." S.191(6) of the 1990 Act provides that the lawfulness of any use, operations or other matter for which an LDC is in force shall be conclusively presumed.
3. An LDC is now sought for the existing use of the land as a site for a caravan for human habitation. In order for an LDC to be granted for an existing use it is necessary for the appellant to show, on the balance of probabilities, that the use was lawful on the date the application was made. S.191(2) of the 1990 Act provides that a use is lawful if (a) no enforcement action may be taken against it (whether because it did not involve development, or require planning permission, or because the time for enforcement action has expired, or for any other reason); and (b) it does not contravene the requirements of any enforcement notice then in force.
4. There is no indication that any enforcement notice relating to the appeal site is currently in force. That being the case, the main issue in this appeal is whether the use of the land as a site for a caravan for human habitation is lawful, or constitutes a breach of planning control against which enforcement action could be taken. This turns on whether the use for which the LDC is sought constitutes a "material change of use" (and therefore amounts to development, by virtue of s55 of the 1990 Act) from the use certified as lawful by the 2010 LDC.

## Reasons

5. The Appellant's case is, in brief, that notwithstanding the terms of the 2010 LDC, the caravan was in fact being used for human habitation from 1999 onwards, and that this use has continued unbroken to the present day.
6. In support of this position, the Appellant explains that the wording of the application for the 2010 LDC, for which he was the applicant, was intentionally restricted to one function of the caravan (that being domestic storage) because "...the then occupant did not want to disclose all her other activities."
7. The occupant of the caravan at the time of the 2010 LDC application was Maria Jane Beez, who provided a signed, dated and witnessed Statement in support of that application. In her Statement she described her use of the land thus: *The land initially included a stable, a caravan and a horsebox, which have been there during the whole of this period. I have rented the land ever since the 1<sup>st</sup> May 1999. I have used the land continuously for the keeping and exercising of horses, the storage of materials in caravan for provisions to do with horses, and the storage of some domestic items (i.e. for making drinks).*
8. The appellant also refers to the Council's Delegated Report on the 2010 LDC application, in which the Officer (who had visited the site) stated that there was little doubt as to the use of the land for equestrian use, but went on to say "I am a little unclear as to the use of the caravan but it seems that it has been used for storage of domestic items in the sense that it has been used as a shelter in which to make drinks etc. This would be part of the same use of the land for equestrian use rather than its own distinct use however I see no problem with the description of the application."
9. The appellant contends that "domestic storage" was not the only lawful use of the caravan when the 2010 LDC was granted. This is right, because planning permission is not required when a caravan is sited on land and used in connection with the lawful use of the land: such activities do not amount to development, and do not constitute a breach of planning control. The 2010 LDC certified that the lawful use of the land was for non-commercial equestrian purposes. The caravan, then, could lawfully have been (and according to the Statement of Ms Beez, was) used for purposes ancillary to that use; such as the storage of provisions to do with horses, and making drinks.
10. Use for domestic storage would not normally be considered ancillary to the equestrian use of the land, although it may be if all it involved was the storage of equipment and stores for making drinks. In any event, in this case, the 2010 LDC includes use of the caravan for domestic storage. As at the date of the 2010 LDC, then, the lawful use of the caravan may be conclusively presumed as for any purpose ancillary to the non-commercial equestrian use of the land, and domestic storage.
11. As I understand it, the Appellant's argument that the caravan has been used for human habitation since 1999 rests on the contention that during Ms Beez' occupation it was in use for domestic purposes, such as for shelter and for culinary activities. That may well have been so, but there is no indication that these were anything other than ancillary to the lawful equestrian use of the land. There is, for example, no evidence that Ms Beez stayed overnight in the caravan, even on an occasional basis, and no evidence that contradicts or undermines her Statement as to how she used the caravan. The Appellant has

asserted that she did not want to disclose all her other activities, but has not provided any information as to what those might have been.

12. The Appellant has sworn an affidavit, dated 8 January 2016, in which he states what was contained in the Council's case notes for the 2010 LDC, but does not provide any evidence of his own as to the use made of the caravan prior to the 2010 LDC.
13. The Appellant contends that the 2010 LDC has established the lawful use of the appeal site as a site for a caravan. I accept that by virtue of the 2010 LDC the siting of a caravan on the appeal site is lawful, but it is important to be very clear about terms. A "caravan site" has a statutory definition as *land on which a caravan is stationed for the purposes of human habitation and the land which is used in conjunction with land on which a caravan is so stationed*.<sup>1</sup> The 2010 LDC did not establish that the appeal site may lawfully be used as a caravan site. Rather, it established that the land could lawfully be used for non-commercial equestrian use, and a caravan stationed on the appeal site could also lawfully be used for domestic storage.
14. Drawing all of this together, I find the available evidence indicates that the use made of the caravan at, and prior to, the issue of the 2010 LDC was part and parcel of the lawful use of the land for non-commercial equestrian purposes. There is no substantive evidence that there was any other use for human habitation that was separate and distinct from the use made of the caravan in connection with the lawful equestrian use of the land or its lawful use for domestic storage.
15. Turning to the use made of the caravan since the 2010 LDC, the evidence of the Appellant is that Ms Beez' shared use of the land and the caravan ceased on 8 June 2010, and on that date he became the sole occupant of the caravan. He explains that after the 2010 LDC was issued the caravan was moved from its relatively discrete site behind the stable block into a prominent position in the field, and replaced with what the Council termed a mobile home.
16. In July 2015, in response to complaints from local residents that the mobile home was being put to residential use, the Council issued a Planning Contravention Notice (PCN) to investigate whether any breach of planning control had taken place. On 16 September 2015 the Council's Enforcement Officer wrote to the appellant explaining that the issue was whether or not the use of the caravan was ancillary to the permitted use of the land, and advising that having considered the information provided in response to the PCN, the Council found that no breach of legislation had occurred and the case would be closed. The Enforcement Officer indicated his agreement with the Appellant's statement that there had been no material change of use of the land.
17. In his affidavit the Appellant states that he has used the caravan continuously as "a domestic *pied a terre*" for more than ten years, but provides no further information as to what that use has encompassed. However, a letter to the Council dated 10 May 2017 from Ms E Lancaster-Thomas advises that the caravan has been used by her family and friends since the appeal site was purchased by the appellant in 2004. She explains that since 2010 she has been the main user of the caravan, and has used it as a place for writing, reading,

---

<sup>1</sup> As defined by s.1(4) of the Caravan Sites and Control of Development Act 1960. This definition is adopted, via s.336(1), for the purposes of the 1990 Act.

entertaining, making art and holding social events. She goes on to state that she has slept there overnight, prepared food and drink, grown herbs, and buried her cat there.

18. There are also a number of letters from local residents objecting to the LDC as sought, some of which take issue with the use of the caravan as described by the Appellant. The Appellant sets out a variety of reasons why he believes these representations should be given limited weight, and points out that only one of them states that "the caravan was never lived in": the caravan to which this observation refers is, in the Appellant's submission, a different caravan in an adjoining field.
19. If the true nature of the use of the caravan since the 2010 LDC was crucial to the outcome of this appeal, I would be minded to rule that a public inquiry was necessary, in order that evidence may be given (and tested) in person and on oath. However, for the purposes of determining whether or not the LDC sought by the Appellant should be issued, it is not necessary to resolve the matter.
20. This is because the LDC that is sought is for the existing use of the land as a site for a caravan for human habitation. Issuing such a certificate would certify as lawful the unrestricted residential use of the caravan: that is, it could be lived in permanently as a dwelling, or used for holiday accommodation throughout the year, or put to any other "residential" use. Such a use would clearly amount to a material change from the use of the caravan that was lawful at the date of the 2010 LDC, which I have set out above.
21. There are therefore two alternatives, and both lead to the same conclusion. Either no such material change of use has taken place, which would accord with the Council's assessment of the evidence in 2016 and would mean that the requested LDC should not be issued. Or, a material change of use to residential occupation took place at some point after the 2010 LDC was issued, in which case it would constitute a breach of planning control that occurred fewer than ten years prior to the current LDC application and so would not have acquired immunity from enforcement by virtue of s171B(3) of the 1990 Act, which would also mean that the requested LDC should not be issued.
22. Under s191(4) of the 1990 Act I have powers to modify the description of the use for which the LDC is sought, so I have given some thought to amending the wording to make it clear that the existing use of the caravan for human habitation is lawful to the extent that it remains ancillary to the lawful use of the land for non-commercial equestrian use. However, since this would merely replicate what has effectively already been certified by the 2010 LDC, I cannot see that it would serve any useful purpose.
23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of the land as a site for a caravan for human habitation 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.

*Jessica Graham*

INSPECTOR