The Planning Inspectorate

Appeal Decision

Site visit made on 24 July 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2019

Appeal Ref: APP/D0840/X/18/3219793
Jacks Farm, The Yard, Lower Bolenow, Bolenow, Camborne, Cornwall TR14 9JA

- 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 G Gotts against the decision of Cornwall Council.
- The application Ref PA18/01207, dated 1 February 2018, was refused by notice dated 25 June 2018.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
- The use for which a certificate of lawful use or development is sought is "two existing caravans".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I am obliged to use the description above which is as set out on the application form. The Council also replicated this in the first schedule to the decision notice. However, it is clarified on the appeal form that the existing use being applied for is the residential occupation of the 2 caravans. That is the basis upon which the appellant and the Council have made their representations. Had I been issuing a certificate, s191(4) of the Act enables the modification of the description of development.

3. The appeal site is that outlined in red on the plans which accompanied the application. The wider land within the appellant's ownership, as outlined in blue on the plans, covers a much broader area and contains a range of buildings including dwellings, parked vehicles and various other items. The red line however approximates to a driveway down from the public highway which is shared with the broader use of the land and then an area around the caravans which has been largely fenced off as well as an area in front of the fencing indicated as parking spaces. Although access is shared, the caravans and parking appear from what I saw and from how they are described within the submissions to be in an area that is physically and functionally separate, occupied independently from the other land within the appellant's ownership and therefore within a separate planning unit.

4. Alternatively, if the appeal site is not a separate planning unit, the appellant would need to demonstrate that the use as a part of a wider mixed use was

lawful but that is not the basis on which the application was submitted or considered by the Council.

5. Turning back to the description, it would therefore be more accurate to describe the use applied for as the use of land within the appeal site for the stationing of 2 caravans each occupied for residential purposes.

Main Issue

6. There are circumstances when caravans can be positioned and used for lawful purposes such as for activities ancillary to the lawful use of a particular site. It is also possible that some residential occupation can be authorised by the provisions of Article 3 and Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended (GPDO).

7. It is not therefore the presence of caravans on the appellant's land that needs to be demonstrated. The main issue in this case is whether the use of the appeal site for the stationing of 2 caravans for residential purposes was a breach of planning control which continued and became immune from enforcement action, under the provisions of s171B of the Act, as at the date of the application. In this case, it is necessary to show that the use has therefore continued for at least 10 years prior to the application as there is no suggestion that immunity had already been achieved before the appellant took ownership. The material date for these purposes is therefore 1 February 2008 and the onus is upon the appellant to demonstrate his case.

Reasons

8. The appellant purchased Lower Bolenowe Farm, in 2001. Bolenowe Farm generally is referred to as "the property" within his affidavit. That document is not accompanied by a plan to indicate where within the property caravans have been positioned or whether they were positioned within the current appeal site.

9. The appellant states within the affidavit that a caravan (the "first caravan") was within the boundaries of "the property", therefore not specifically referring to it being within the current planning unit, in 2001. At that time the caravan was in a dilapidated condition and it was moved into a shed. The position of the shed is not clarified although I did see a large shed when I visited, that is not clearly within the same planning unit and I also cannot assume that it is the shed being referred to. This first caravan was not moved to its current location within the appeal site, until "several years later". It is not clear when the first caravan was moved to its current position or whether it was inhabited whilst in the shed or only when moved onto the appeal site. Another caravan was also moved onto the property in 2001.

10. An aerial photograph with a hand-written annotation with the date of 2001 is presented in support of the appellant's case. The date or primary source of the image is not verified but is not disputed by the Council. Even if the date can be relied upon, the photograph is not very clear. The image shows what may be 2 caravans but it is not obvious whether the same physical or functional separation of the site as currently exists, was in existence at that time and there is no cross reference in the written evidence to this photograph.

11. Correspondence is submitted in support of the appellant's case from third parties indicating that caravans have been continuously on land within the appellant's ownership since before the material date and that there has also

included residential occupation. The appellant's land ownership includes land outside of the appeal site. The letters do not refer to a plan or the submitted aerial photograph.

12. Reference is made within submitted evidence to the appellant himself occupying a caravan "in the yard" whilst he was renovating some cottages on the farm. The Council suggests that this occupation could have been lawful within the scope of the temporary uses allowed for within the GPDO, a credible suggestion in these circumstances. These matters are not addressed by the appellant's submissions or evidence even though this questions whether at times the breach of control has been continuous.

13. The Council submits that in 2002, a caravan near the entrance to the site was used as a tack room and rest area although it is not clear where this was located. No evidence such as contemporaneous photographs or signed, sworn statements from the investigating officer are submitted with the Council's statement. The Council investigated the site subsequently in August 2017. At that time, 2 caravans were in place in the current location, fenced off from the remainder of the yard but they state that there was no evidence of residential occupation. A further site visit in September 2018 confirmed no change. Again, no evidence such as photographs or sworn statements are provided.

14. The Planning Practice Guidance states that without sufficient or precise information, it is justified to refuse applications for LDCs. The appellant's evidence in this case does not provide sufficient clarity about where caravans have been located or what use has been taking place on the site over the 10 years prior to the date of the application. Despite the limitations of the Council's direct evidence, I consider that the appellant's evidence is not sufficiently precise and unambiguous and does not therefore demonstrate what needs to be established on the balance of probability.

15. 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 residential occupation of 2 caravans without planning permission 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.

A Harwood

INSPECTOR