



Appeal Decision

Site visit made on 23 July 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2019

Appeal Ref: APP/V3120/X/18/3215945

Pool Cottage, 6 Abingdon Road, Sutton Courtenay, Abingdon OX14 4NF

- 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 J Lister against the decision of Vale of White Horse District Council.
- The application Ref P18/V0266/LDE, dated 31 January 2018, was refused by notice dated 29 May 2018.
- 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 described as siting of a residential mobile home.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

1. The description in the banner heading is taken from the application form. However, it is clear that an LDC is sought in respect of an existing use for the siting and residential occupation of a caravan. The Council determined the application on that basis, and I shall deal with the appeal accordingly.
2. The Planning Practice Guidance (PPG)¹ makes it clear that planning merits are not relevant at any stage in LDC applications or appeals. As a result, I am unable to take such matters into account in my decision.

Main Issue

3. The effect of s191(2) of the Act is that the use for which an LDC is sought would be lawful if no enforcement action can be taken because the time for taking such action has expired. The relevant time limit in respect of the use in question is at s171B (3) of the Act, which provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Therefore, the main issue in this appeal is whether the available evidence demonstrates that use of the appeal site for the siting and residential occupation of a caravan began more than ten years before the date of the application and has been continuous thereafter.

¹ Lawful development certificates. Paragraph: 009 Reference ID: 17c-009-20140306.

Reasons

4. The site contains a touring caravan enclosed by fencing. During my site visit I observed that the caravan contained a bedroom, a lounge/living area, a kitchen, shower and toilet. The caravan was in residential occupation. The site is alongside a residential garage block. A communal parking area lies between the site and the rear gardens of a terrace of dwellings.
5. The onus is on the appellant to show that the use for which an LDC is sought is lawful. The PPG advises that where a Council 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 in order to justify the grant of a certificate on the balance of probability².
6. The appellant supplied a Statutory Declaration (SD) with the appeal, in which she claimed that the caravan had been stationed at the site in 2004 and let as an independent residential unit since 2005. Supporting SDs were provided by several witnesses. One witness claimed to have occupied the caravan as his own home, eating and sleeping there in a fully independent way, continuously between June 2005 to June 2008 and again from 1 November 2014 to 13 April 2016. Another witness referred to occupying the site as his home and sole residence independently and separately from the nearby dwelling owned by the appellant, between 20 June 2008 and 19 September 2010. Similar claims were made by three other witnesses concerning their respective occupation of the site in the periods between 20 September 2010 to 7 May 2013, 7 May 2013 to 30 October 2014 and 13 August 2016 to 19 July 2017. Another witness claimed to have occupied the site as her own home, eating and sleeping there in a fully independent way, between 14 April to 12 August 2016 and again from 19 July 2017 to 5 November 2018.
7. The SDs were all signed, dated and witnessed by solicitors. The witness evidence clearly demonstrates an unbroken pattern of residential occupation as an independent unit of accommodation by successive persons, beginning at or around June 2005 and being continuous up to the application date, the period of residential use being in excess of ten years.
8. Four witnesses referred to where they had resided as a two bedroom dwelling, as opposed to what was described by other witnesses as a caravan. One witness now describing where he had resided as a caravan had also supplied SDs for a previous LDC application where he referred to living at the site in a two bedroom dwelling. However, all the witnesses clearly identified the site as where they claimed to have resided by reference to a plan, apart from in one instance where the plan was absent. In any event, as lay people the witnesses are unlikely to have an appreciation of the planning distinction between a dwellinghouse and a caravan. Furthermore, it is not unusual for the lounge/living area of a touring caravan to also be used as a bedroom. Therefore, I do not regard the inconsistency in how the accommodation was described by witnesses as creating any significant ambiguity in terms of their evidence.
9. Whilst some of the SDs had the witness names and/or the dates of residing at the site filled in by hand, this is not unusual in partly pre-prepared legal documents. I cannot agree with the Council's suggestion that such details

² Lawful development certificates. Paragraph: 006 Reference ID: 17c-006-20140306.

could have been entered after the SDs had been signed; a solicitor is hardly likely to bear witness to a patently incomplete SD, given the potentially serious consequences of doing so if the document were subsequently found to be untruthful. The solicitor witnessing two of the SDs confirmed that their signature was genuine. In respect of the SD missing a plan, I am given to understand that this had unfortunately been mislaid. Given the similarities in the contents of this SD to others provided, in my view there can be no doubt that the witness was also referring to the same site.

10. One witness stated that differences from his previous SDs in terms of the dates he claimed to have resided at the site was due to human error and not intentional. Even if this witness had first resided at the site on 26 July 2005 not in June 2005 as now claimed, the later date is still around 2½ years before the beginning of the ten-year period. Also, the available evidence indicates that this witness is likely to have vacated the site on 13 April 2016 not 29 April that year as he previously claimed; by the end of April 2016 another witness claims that they were occupying the caravan. It is understandable that a person might have difficulty in recalling exact dates. As a result, I do not regard the above inconsistencies as calling the overall credibility of this witness's evidence into question. Moreover, the discrepancies between the dates in question are limited and they have no significant bearing on the continuity of the residential use of the caravan. The reference by different witnesses to the site address as either Pool Cottage or Pool House does not create any significant uncertainty, as the appellant stated in her SD that the site has been known by both names.
11. Therefore, any inconsistencies in the witness evidence are not material to whether the residential use of the caravan has been continuous for more than ten years. The witness evidence all supports the appellant's version of events, it is largely consistent and it is sufficiently precise and unambiguous. As a result, I consider that the SDs should all be afforded significant weight. The Council did not produce any evidence of its own which might have contradicted the appellant's version of events or made them less than probable. Although the Parish Council stated that it had no record of the witnesses living at the site, this alone is not sufficient to cast doubt on the appellant's claim. I am also mindful of relevant case law, which makes it clear that an appellant's evidence should not be rejected simply because it is not corroborated by independent evidence³.
12. As Council Tax for the site was backdated from 2016 to 1 February 2006, there is no contemporaneous record of the liability for such payments that might otherwise have provided further support for the appellant's version of events. The appellant also supplied copies of letters dating from May 2005 and September 2010, sent by a company requesting payment for cleaning a caravan at the site. On its own, cleaning a caravan on two occasions at approximately five-year intervals is not indicative of its ongoing residential occupation or a continuous residential use of more than ten years. Consequently, I give the Council Tax and cleaning company letters little evidential weight.
13. Overall however, for the reasons set out above I find that the witness evidence is persuasive. I do not share the Council's view that there is an absence of

³ *Gabbitts v SSE & Newham LBC* [1985] JPL630.

factual evidence to support the appellant's claim. Therefore, the available evidence leads me to conclude that on the balance of probability, the site has been used for the stationing and residential occupation of a caravan for more than ten years prior to the date of the application.

Conclusion

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 siting and residential occupation of a caravan 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.

Formal Decision

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

Stephen Hawkins

INSPECTOR

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 31 January 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown by a solid black rectangle 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 available evidence demonstrates that, on the balance of probability, the use for the siting and residential occupation of a caravan commenced more than ten years before the date of the application and has been continuous thereafter.

Signed

Stephen Hawkins

Inspector

Date: 7 August 2019

Reference: APP/V3120/X/18/3215945

First Schedule

Use for the siting and residential occupation of a caravan

Second Schedule

Land at Pool Cottage, 6 Abingdon Road, Sutton Courtenay, Abingdon OX14 4NF

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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: 7 August 2019

by **Stephen Hawkins MA MRTPI**

Land at: Pool Cottage, 6 Abingdon Road, Sutton Courtenay, Abingdon OX14 4NF

Reference: APP/V3120/X/18/3215945

Scale: Not to scale

