



Appeal Decision

Site visit made on 18 September 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2019

Appeal Ref: APP/V3310/X/19/3225613

The Poplars, Rush Hill Lane, Blackford, Wedmore BS28 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 Mr Ron Boulton against the decision of Sedgemoor District Council.
 - The application Ref 50/18/00118/DT, dated 26 October 2018, was refused by notice dated 13 December 2012.
 - The application was made under section 192(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 the use of land to site a static caravan to provide ancillary accommodation for a family member.
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Decision

1. The appeal is dismissed.

The Site and Main Issue

2. The dwelling known as The Poplars which is identified on the base-map submitted with the application as 'Poplars Farm', is a detached dwelling within a rural setting. It is set back from the lane leading to this and adjoining fields, by a garden area which is separated from the lane mainly by mature planting. Within that garden area, there is a large trampoline, ponds, other domestic paraphernalia and there has clearly been a regular degree of maintenance of grass and ornamental planting although around the edges the trees and shrubs have become substantial and not overly manicured.
3. The area immediately to both sides and the front and rear of the dwelling is therefore clearly used in association with the dwelling and there is no dispute that this is the historic garden. The application has been made on the basis that the proposed caravan will be positioned on the appeal site which is a wedge-shaped area of land (the area outlined in red on the submitted plans) to the north-east of the historic garden.
4. The positioning of a caravan that remains capable of being wholly moved intact is generally held to be a use of land. It is necessary to consider whether the use of the caravan as proposed as living accommodation ancillary to the occupation of The Poplars, would involve the making of a material change in the use of the land. In considering this main issue it is necessary to assess the background and history of the site based upon the submitted evidence as well as the implications for whether the proposal would require planning permission.

Reasons

5. In order to judge whether a material change of use would occur as a result of the proposal, it is necessary to consider the extent of the planning unit of The Poplars. If the appeal site is within the same planning unit as the dwellings, it is also necessary to consider whether the present situation in terms of the use has been continuously occurring for a period of 10 years or more with respect to s171B of the Act. If the proposed location for the caravan is outside of the established planning unit, its use as proposed could not be considered as ancillary to the use of the dwelling. It is necessary for the appellant to demonstrate his case on the balance of probabilities.
6. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes. The appellant has referred to the site being within the 'curtilage' of the dwelling but that is not an indication of the use of land and it is not to be confused with 'planning unit'.
7. Between the garden area and the appeal site there is a strong line of large, mature trees and there remains a partial wire fence which the appellant states is only temporary but nevertheless helps to separate the site from the garden. The central part of the site is cleared and surrounded by dense vegetation which distinguishes it from the land that adjoins it although there is a cleared access through to the land at the rear which is not claimed by the appellant to be in domestic use. Although the appeal site is owned and occupied by the appellant, these physical features are sufficient in my view to provide a significant degree of separation from the historic garden area. It is also however necessary to consider how the site has functioned over the 10 years prior to the application.
8. There was a table and chairs on it at the time of my visit as well as various plant pots, other domestic items and also some building materials. The Council has reproduced a photograph from November 2018 and another from August 2018 from the same position showing that the site was more overgrown around the time of the application submission. The photographs are not comprehensive but do indicate that there has at times at least been some difference in the amount of cleared and usable space within the site.
9. Two sworn statements are also submitted in evidence from third parties who have known the appellant and Mrs Boulton since 1985 and 1969, respectively. Both statements refer to the appellant having cleared the site in 1983, before one of those persons knew the appellant, and not consistent with the appellant saying he has owned the site from 1988. Neither statement sets out what knowledge those persons have had of the site although the appellant has clarified that they helped with hay making, hedge maintenance and other jobs. However, the statements do not clarify what those people can recall seeing happening or what was present on the site at various times.
10. Background documents prepared by the planning agent who submitted the application for the appellant, indicate that the appeal site was land associated with a cottage that once stood on it. The cottage was cleared in the 1950s and subsequently "travellers" occupied it in a caravan which is stated as being "destroyed by storm damage in 1988". Some concrete is still in the ground on the appeal site which may be the remnants of these previous developments.

11. The planning statement prepared by the same planning agency, dated November 2010, states that the residential use of caravans ceased in 1983 and that "the site contains two unoccupied caravans and ancillary shed in a derelict state". The same statement refers to that submission being an "application to replace two residential caravans and shed with one single storey log cabin dwelling". The statement goes on to suggest that a benefit of that proposal was "removing the existing derelict structures on the site". Undated photographs also submitted with the appeal show the substantial remnants of caravans which are in a poor state of repair.
12. There is evidence therefore to indicate that the site was not completely cleared in 1983 as the sworn statements indicate and later when the 2010 application was submitted. Even if the caravans were not at that time occupied, the storage of these items and the building referred to was not clearly part of the domestic use of The Poplars.
13. The submitted evidence indicates, on the balance of probabilities, that as well as being physically separate from the historic garden of The Poplars, the appeal site has, within the last 10 years, been used at least in part for purposes which were distinct and functioned separately from the dwelling. The appeal site is not clearly within the same planning unit. The siting of a caravan on the appeal site for use as residential accommodation could not be ancillary to the use of The Poplars. Such residential use would be a primary use of the site and would constitute a material change in use of the land requiring planning permission.

Conclusion

14. 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 use of land to site a static caravan to provide ancillary accommodation for a family member, 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