



Appeal Decision

Site visit made on 28 January 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 30 January 2020

Appeal Ref: APP/P1133/X/19/3221496

Yonder Ridge, Rowthorne Road, Whitestone, Exeter, EX4 2JE

- 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 Paul Wayland against the decision of Teignbridge District Council.
 - The application Ref 18/01984/CLDE, dated 26 September 2018, was refused by notice dated 19 November 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 the siting of a caravan for human habitation with associated wooden building and residential access.
 - **Summary of Decision:** appeal allowed.
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Procedural matters

1. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider, 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 an LDC. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
2. The appellant points out that the caravan is smaller than the maximum dimensions for a caravan as defined in The Caravan and Control of Development Act 1960 (as amended). I note that the site plan (JCW1(Rev 2) dated 1st June 2018) shows an area in red that reflects the maximum dimensions as defined in the CCDA but I attach no weight to this in the determination of the appeal which relates to the use of the site at the time of the application. Whether the appellant could lawfully replace the caravan in the future would be dependent upon the position under planning legislation at that time.

The site and relevant planning history

3. The appeal site forms part of a larger area of land in agricultural use within the appellant's ownership which slopes steeply down from the road. The appeal site is to the east of the land with a vehicular access leading from the road to a level area of land where there is a turning area, a touring caravan and two timber structures. The caravan has water, electricity and calor gas supplies

and there were various items of domestic paraphernalia around the site. A post box and service boxes are attached to the entrance gate to the site.

4. The west boundary of the appeal site is not defined on the ground and there is no boundary fencing in this location. Concrete steps run down within the appeal site from the upper level area to a small fenced area containing three alpacas. The land lower down the slope is wooded.
5. One of the wooden structures is a mono-pitched shed immediately to the east side of the caravan. The other is a recently constructed dual-pitched tiled shed with double doors which contains water pumping equipment for a bore hole and a range of domestic and other items. Although the description refers to 'an associated wooden building', the appellant's supporting statement refers to two wooden structures.
6. Two previous applications were submitted for LDCs in October 2017 and May 2018 and both were refused.

Main Issue

7. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

8. The appellant's case is that the caravan was brought onto the site in 2005 and that a material change of use for the siting of a caravan for human habitation has been continuous for a period of more than 10 years prior to the date of the application on 26 September 2018. The appellant's family home is in Exeter where he stays on some occasions. The caravan was used intermittently by the appellant and by his brother and partner (who used it as a second home), as it was not a person's sole or main residence. When no use was taking place, the caravan remains equipped for use and the owner kept food and personal possessions ready for use.
9. Various statutory declarations (from John Wayland, Paul Wayland and Judith Saunders) and supporting letters and photographs, including aerial photographs) have been submitted in respect of the use of the site and when the caravan was first brought onto the site. It appears from this evidence that the caravan has been on site since 2005 and the Council does not dispute this. However, the reason for the Council's refusal of the LDC is that they consider it has not been demonstrated that the whole of the land edged red has been used continuously for the purpose of siting a caravan for human habitation with associated wooden building and residential access for a period of 10 years or more. The Council arrived at their conclusion because the occupation of the caravan has not been continuous and that both John and Paul Wayland have dwellings elsewhere.
10. Whilst there is an absence of documentary evidence such as utility and Council Tax bills, I attach considerable weight to the statutory declarations submitted.
11. The Council has confused continuity in the material change of use of the land with continuity of occupation. The use of the land for the siting of a caravan for human habitation commenced in August 2005 when the appellant transferred the caravan from a site located at Holden Hill, Devon. The appellant makes no

claim that the caravan was used (occupied) continuously but that its use was intermittent and was not a person's sole or main residence, although this conflicts with the appellant's statutory declaration in which he states in paragraph 7 that 'I consider that the caravan is my main residential location'.

12. The appellant refers to *Thurrock BC v SSETR and Holding [2002] EWCA Civ226* in respect of a use only becoming lawful if it continued throughout a ten year period to the extent that the LPA could have taken enforcement action. The appellant contends that if no one was physically present in the caravan at the time of a Council visit, there would have been signs of current residential activity based on a fully equipped kitchen, food, clothing, personal possessions, bedding and other items to support day-to-day living. Whilst such chattels may well have been present, I do not see how a Council officer could have seen such items without access to the inside of the caravan although the vehicular access and wooden building would have been visible. On the other hand, if an officer had concerns about any breach of planning control, this could have been followed up with the appellant and internal inspection requested or through the formal process of a Planning Contravention Notice.
13. The ownership of a second home is not uncommon, whether it is a dwelling or a caravan, and a person who spends time in both does not mean that the use of a property ceases when it is not physically occupied. I have no evidence to indicate that the use of the pitch for the siting of a caravan for human habitation has been for any other purpose since it was first brought to the site, although there is insufficient evidence to draw the same conclusion relating to the use of the whole of the appeal site. Photographs indicate that the older shed to the rear of the caravan has been in place for 10 years as does the driveway down to it, although this is via a longstanding field gate providing access to the whole of the appellant's holding, as well as to the caravan, and it still serves this purpose.
14. The second wooden building receives little explanation from the appellant, presumably because it is relatively new but, in the absence of any evidence to the contrary and from my own observations, the newer shed would not have satisfied the period of time necessary to achieve immunity from enforcement action. It is not clear whether this shed has been erected solely for purposes ancillary to the siting of the caravan for human habitation and/or in support of the maintenance of the agricultural holding and livestock. The same question can be asked about the purpose of the water pump equipment – is it exclusively for the caravan or for the livestock, or for both. This therefore raises doubts over the extent of the planning unit.
15. The appellant considers that, in the light of *Burdle and Williams v SSE & New Forest RDC [1972] 1 WLR 1207* a new planning unit has been created on the appeal site on the basis that within the single unit of occupation two physically separate and distinct areas are occupied for substantially different and unrelated purposes and as such should be considered as separate planning units. However for the reasons set out above, I do not consider that, as a matter of fact and degree, that a separate planning unit has been established and that the appropriate planning unit is all of the landholding including the agricultural land.

16. Notwithstanding my view on the planning unit, I am satisfied on the balance of probability that a caravan has been sited on the appeal site for the purpose of human habitation for a period of more than ten years prior to the date of the application that this represents a material change of use from agriculture to a mixed use of agriculture and the siting of a caravan for human habitation with ancillary wooden building and vehicular access. I have therefore amended the description of the use in the Certificate attached to this decision under the powers available to me under s191(4) even though the whole of the planning unit has not been included within the red line of the appeal site.
17. The appellant points out that the Council has been aware of the uses on the site for over 14 years and in relation to the caravan, since October 2011, and no enforcement action has been taken. However, this is beside the point as it is the appellant who has chosen to submit applications for an LDC. The absence of enforcement action is irrelevant to an LDC where the onus of proof rests entirely with the appellant and the standard of proof is on the balance of probability.

Conclusion

18. 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 of a caravan for human habitation with associated wooden building and residential access 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

19. 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.

P N Jarratt

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 26 September 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched 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:

A caravan has been sited on part of the appeal site for the purpose of human habitation for a period of more than ten years prior to the date of the application that this represents a material change of use of the appeal site from agriculture to a mixed use of agriculture and the siting of a caravan for human habitation with ancillary wooden building and vehicular access.

(It should be noted that the wooden building housing the water pump equipment is operational development that is excluded from this Certificate).

Signed

P N Jarratt

Inspector

Date 30 January 2020

Reference: APP/P1133/X/19/3221496

First Schedule

The mixed use of land for the purposes of agriculture and the siting of a caravan for human habitation with ancillary wooden building and vehicular access.

Second Schedule

Land at Yonder Ridge, Rowthorne Road, Whitestone, Exeter, EX4 2JE

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.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated:30 January 2020

by P N Jarratt BA DipTP MRTPI

Land at: Yonder Ridge, Rowthorne Road, Whitestone, Exeter, EX4 2JE

Reference: APP/P1133/X/19/3221496

Scale: Do not scale

