
Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 01 May 2020

Appeal Ref: APP/X1355/X/19/3240446

The Byre, 4 Stanhope Hall, Stanhope, Bishop Auckland DL13 2PF

- 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 Graeme Ward against the decision of Durham County Council.
 - The application Ref DM/19/01628/CEU, dated 18 April 2019, was refused by notice dated 7 August 2019.
 - 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 proposed siting and use of static caravan for short term stays since 1968.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed use which is found to be lawful.

Procedural Matters

2. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection.
3. The burden of proof regarding decisive matters of fact rests on the appellant. An appellant must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion. The relevant test of the evidence is 'the balance of probability'.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

5. The appellant states, and the Council does not dispute, that planning permission was granted for the siting of four static caravans on the appeal site in 1968. The appellant says that the then owner, Mrs Mary Turnbull, stationed caravans on the land pursuant to that permission. Neither of the main parties has a copy of the 1968 planning permission.

6. Nonetheless, the permission was cited in 1980, when Mrs Turnbull was served with an enforcement notice (EN). I have been provided with a copy of this notice, which refers to 'the four caravans granted planning permission on 19th July 1968 by permission 16X13/468'. The site plan accompanying the EN corresponds with the land that is the subject of this appeal. It therefore seems clear, on balance of probability, that the 1968 permission for four caravans was implemented.
7. It was held in *Panton and Farmer v SSETR & Vale of White Horse DC [1999] JPL 461* that lawful use rights could only be lost by: evidence of abandonment; the formation of a new planning unit; or by being superseded by a further change of use. A use which was merely dormant or inactive could still be considered as 'existing', so long as it had already become lawful and not been extinguished in one of those three ways.
8. As the 1968 permission was for four caravans, the siting of one caravan on the land for the same use falls within the scope of the permission. In this appeal the concept of abandonment needs to be considered as there is no evidence of a new planning unit having been created or any other intervening uses over the years. The judgement in *Trustees of Castell-y-Mynach Estate v SSW [1985] JPL 40* sets out the four tests of abandonment which are: physical condition of the land; period of non-use; any other use; and the owner's intentions. *Bramall v SSCLG & Rother DC [2011] EWHC 1531 (Admin)* affirms that the weight to attach to each of the four criteria is a matter of judgment for the decision-maker.
9. The appellant confirms that the last caravan on the site was removed in 2015, thus leaving a period of four years until the date of the LDC application. However, in my view, this relatively short period of time would not amount to abandonment. The appellant states that Mrs Turnbull sold the land in 1997, and since that time a single caravan has been positioned on the land for short stay use. Although the evidence for the use between 1997 and 2015 is patchy, there is little to suggest significant periods of non-use of the land between these dates that would amount to abandonment of the use.
10. I have had regard to the aerial photograph submitted by Mr Turnbull taken in or around 1986, which clearly shows that there was no caravan on the land on the date the photograph was taken. However, there is no indication of the length of time that the caravan was absent, which limits the weight I can give to this submission.
11. The owner's intentions, as noted above, are to put a caravan back on the site to provide holiday accommodation. To this end, he has produced evidence of his discussions with the Council, as well as the practical measures he has undertaken to prepare for the siting of a new caravan. Taking into account the LDC application itself, there can be little doubt of the appellant's wish to resume the lawful use of the land. In terms of the physical condition of the land, the Council raises no concern, and so this criterion carries little weight in my consideration.
12. Having had regard to the relevant case law, I am satisfied that the use of the site as permitted in 1968 has not been abandoned. Although there has been no caravan on the site in recent years, no convincing evidence has been put forward of an intention not to continue the holiday use of the site. Furthermore, no planning permission is needed for the replacement of

individual caravans. I consider that, on the basis of the evidence before me, on the balance of probability, the continuing use of the appeal site for short term stays has been demonstrated and the use has not been abandoned. The Council make no case that the lawful use rights conferred by the 1968 permission have been lost or extinguished by any other mechanism.

Conclusion

13. For the reasons given above, I conclude on the evidence available that the Council's refusal to grant an LDC in respect of the siting and use of a static caravan for short term stays was not well founded and that the appeal should succeed. I shall exercise the powers transferred to me under s195(2) of the Act.

Elaine Gray

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 18 April 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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:

It has been proven on the balance of probability that the use of the land for the siting and use of static caravan for short term stays has been retained and that this use has not been abandoned or extinguished.

Elaine Gray

Inspector

Date: 01 May 2020

Reference: APP/X1355/X/19/3240446

First Schedule

Siting and use of static caravan for short term stays.

Second Schedule

Land at The Byre, 4 Stanhope Hall, Stanhope, Bishop Auckland DL13 2PF

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: 01 May 2020

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Scale: Not to scale

