The Planning Inspectorate

Appeal Decision

Site visit made on 10 March 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date:07 May 2020

Appeal Ref: APP/Y2620/X/19/3227582
'Sandiacre', Walcott Road, Bacton NR12 0LS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is by Michael Martin against the decision of North Norfolk District Council.
- The application ref.CL/18/2262, dated 7 December 2018, was refused by notice dated 29 March 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The certificate is sought for the use of the land for the siting of a caravan in residential occupation.

Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that in an appeal under s.195 of the Act the planning merits of the existing development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

3. The appellant argues that in determining whether the use is lawful or not it must be shown that the use for siting a residential caravan should have been continuous for a period of at least 4 years prior to the LDC application date. However, the four-year time limits for immunity from enforcement action set out in s.171B(1) and (2) of the Act apply to operational development and to the change of use of any building to use as a single dwellinghouse. This case is concerned with neither of these forms of development, but with use of the land for siting a residential caravan. As the Council argue, the relevant time limit is therefore 10 years, as set out in s.171B(3) of the Act.

Background matters

4. Along this part of the northern side of Walcott Road are several plots where caravans and other structures are sited. 'Sandiacre' is one of these and was previously owned by Sean Coburn. In either 2016 or 2017 Mr Coburn sold the western part of the site to Angela Matthews but retained the eastern part. The address of this part is more properly 'Land adjacent to Sandiacre'. That is how I refer to it where necessary for the purposes of my determination.

5. The site to the east of the appeal site is known as 'Sandbanks'. It has been owned by Rocky Cattano since September 2015.

Reasons

6. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the use for siting a residential caravan was lawful at the date of the application – 7 December 2018. This would be the case if the use had subsisted continuously for a period of 10 or more years before that date and was immune from enforcement action.

7. The government's Planning Practice Guidance on Lawful Development Certificates[1] includes the advice that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the local planning authority 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 to justify the grant of a certificate on the balance of probability.

8. In his Statutory Declaration Mr Coburn says that he lived on the Sandiacre site in a twin-unit mobile home from about 1999 or 2000 until December 2013 when there was a tidal flood which destroyed the mobile home. After that he had moved to another caravan donated by a local Flood Support and Help group located on the land he owned adjacent to Sandiacre – between Sandiacre and Sandbanks. He occupied that caravan from December 2013 to December 2016, when he sold the land to Mr Martin the appellant, and Ms Ellis. Mr Cattano then moved a caravan onto the site, which he let. The Sandiacre site itself in either August 2016 or in June 2017. This date is not relevant to my determination.

9. Mr Cattano's Statutory Declaration of July 2018 states that he had known Mr Coburn for more than 10 years and had visited him when he lived at Sandiacre and then on the land adjacent. A yellow and white caravan on the land had been occupied by Wes Woods, Helen Robinson and their children since at least 2010, until the tidal flood of December 2013, when the caravan was destroyed and the family re-housed by the Local Planning Authority. Before the caravan was moved onto the appeal site they had lived in a converted horse-box on land described as 'between Sandiacre and Sandbanks'.

10. After the 2013 flood the damaged yellow and white caravan was removed from the land. It was replaced by a new caravan in January 2014 into which Mr Coburn moved and lived there until 2016 before moving to an address in Cromer. He sold the appeal site to Mr Martin the appellant, who allowed Mr Cattano to retain and let the caravan for residential purposes. Mr Cattano maintains that the site was in continuous residential occupation for at least 7 years prior to July 2018.

[1] Planning Practice Guidance 'Lawful Development Certificates' - Paragraph 006 Reference ID: 17c-006-20140306.

11. Lorraine Allen says in her Statutory Declaration that she had known Wes Woods and Helen Robinson for some 7 years, and that they had lived in the yellow and white caravan for at least 3 years before the flood in December 2013, when they were re-housed by the Local Authority. Before the yellow and white caravan was brought onto the site that they had lived in a converted horsebox on the land.

12. The Officer's report to Council says that the land adjacent to Sandiacre was occupied from some point in 2007 until December 2013 by Mr Woods and Ms Robinson – at first in the converted horse box, and then in the caravan that was destroyed in 2013. From January 2014 to December 2016 the new caravan on the appeal site was occupied by Mr Coburn. In January 2017 that caravan was removed and Mr Cattano replaced it with another.

13. Regarding the period from December 2013 to January 2014, it is agreed between the parties that the yellow and white caravan was effectively destroyed in the tidal surge, and then replaced. In circumstances such as these I do not consider it would have been expedient for the Council to issue an enforcement notice – any more than if, for instance, a dwellinghouse had been damaged by fire and was in the process of repair.

14. According to Mr Cattano's Statutory Declaration the appeal site was sold to the appellant in 2016. The appellant's evidence is that the actual date was 15 January 2017. There appears to be no dispute that Mr Coburn vacated the site at some time in December 2016.

15. It appears to me that a caravan on the appeal site was residentially occupied from some time in 2007, and on that basis would have become immune from enforcement action in 2017. Taking the most generous view, if the use had started on 1 January 2007 it would need to continue until at least 31 December 2016 in order to become immune.

16. However, there is no information about when in 2007 Mr Woods and Ms Robinson started their occupation of the appeal site. Evidence for residential occupation during or after December 2016 comprises no more than statements to the effect that Mr Coburn was re-housed in December 2016, that Mr Cattano had then replaced Mr Coburn's caravan with a new one, which was let from some time in January 2017. The appellant's appeal statement says he had acquired the land adjacent to Sandiacre on 15 January 2017, which suggests it was unlikely Mr Coburn's caravan had been replaced and let before that date. There is nothing before me to indicate who might have lived in the new caravan put on the appeal site in January 2017, or for what period(s), or indeed at any time up to the date of the application.

17. Vagueness about the date of commencement of residential occupation, and lack of information about occupation after Mr Coburn's departure, do not provide the precise and unambiguous evidence expected in a s.191 determination. It appears to me that there was a distinct break in occupation when Mr Coburn moved to Cromer and the appeal site was sold to the appellant, after which there is no substantial evidence of occupation. On the most generous interpretation continuous occupation of a caravan on the site falls somewhat short of the required 10 years, even if only slightly. On the balance of probabilities I do not consider it has been shown that occupation of a caravan on the appeal site for residential purposes has subsisted continuously for a period of 10 or more years prior to 7 December 2018.

Conclusions

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land for the siting of a caravan in residential occupation on Land Adjacent to 'Sandiacre', Walcott Road, Bacton NR12 0LS 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.

Stephen Brown

INSPECTOR