



Appeal Decision

Site visit made on 27 July 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2020

Appeal Ref: APP/X1118/C/20/3248592

Burland House, Halsinger, Braunton, Devon EX33 2NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Richard John Lambert Congdon against an Enforcement Notice (EN) issued by North Devon District Council.
 - The enforcement notice was issued on 20 February 2020.
 - The breach of planning control as alleged in the notice is: Within the last 4 years unauthorised change of use consisting of the residential use of a caravan.
 - The requirements of the notice are: Cease the residential (non-ancillary) use of the caravan.
 - The period for compliance with the requirements is: Nine months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice is corrected by deleting the words "Within the last 4 years unauthorised change of use consisting of the residential use of a caravan" under paragraph 3 and replacing them with "Within the last 10 years, change of use of the land by the siting of a caravan used for residential purposes".

The Notice

2. The EN refers to the alleged unauthorised use occurring within the last four years. However, the stationing of a caravan on land and its use, for example for residential purposes, would normally come under the 'ten-year rule' as set out in the time limit specified in s171B(3) of the 1990 Act which states "....no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach". I have evidence from the appellant about the status of the caravan and whether it is a building. I shall consider this point first and then review the implications of my findings on the content of the EN and the appeal.
3. The unit clearly has the appearance of a caravan being like numerous large caravans/mobile homes sited, for example, on holiday parks. I have no doubt that it falls within the statutorily defined dimensions of what constitutes a caravan. The appellant refers to the caravan being delivered to the site in 2005. A letter written by the appellant in March 2005 refers to arranging for

the caravan to be delivered to the garden of Burland House and this needing careful planning because the corners are very tight. Photographs of the caravan also from 2005 show the caravan just after it arrived in its current position. This evidence points strongly to the unit being brought to the site as a mobile home in one piece and in one manoeuvre. At my site visit I looked under the caravan. It still has its subframe in place and it sits above the ground like many other caravans. To me it seems very likely that the unit could still be picked up intact, including its floor and roof, and put on a lorry by crane or hoist. It therefore is mobile.

4. The appellant refers to the caravan being concreted in by heavy duty chains attached to iron posts to prevent the caravan swaying in the wind and it being connected to services such as water, electricity and sewerage. However, one of the 2005 photographs appears to show the caravan supported on concrete blocks which is a typical arrangement for the siting of mobile homes. So too is the securing of the caravan to the ground by chains. Unhooking the chains and the detachment from services is usually easily achieved.
5. I saw the decking and have studied the photographs showing it being built. Whilst the decking is a structure it appears for the most part to merely abut the caravan. Even if it is attached in places, it plays no structural role that would affect the status of the caravan as a use of the land or take the caravan outside the statutory definition.
6. Taken in the overall round, although the caravan has been in the same place for 15 years, as a matter of fact and degree I find it is still a caravan. Thus, it is not a building and the allegation in the EN needs correcting as accordingly.
7. Consequently, the context for the ground (d) appeal is the ten-year rule. Although I would be examining the case over a longer time period, the appellant has provided details of the caravan's occupation since 2005 and argues that the use had become lawful by the time of issuing the EN whether under the four or ten-year rule anyway. The Council has also seen this evidence and been able to comment on it. As such, there would be no injustice if I corrected the allegation and considered the ground (d) appeal accordingly.

Main Issue

8. In view of the above, the appellant must show that, on the balance of probability, the caravan has been occupied for independent residential purposes on a substantially uninterrupted basis for a period of at least ten years prior to the date when the EN was issued. The material date is therefore 20 February 2010. The onus to make out the case rests with the appellant.

Reasons

9. The appellant accepts that between 2005 and 2009 the caravan was occupied ancillary to the residential occupation of Burland House. It is then declared that on 1 January 2010 Suzanne Holmes began to occupy the former caravan on a full time, independent residential basis and remained in residence until 31 August 2013. I note the letter dated 4 November 2013 from Suzanne Holmes in support of that declaration. However, having received a complaint about the use of the caravan, the Council wrote to the appellant's wife in February 2011 enquiring about the purpose of the mobile home on the land. The appellant's wife replied in March 2011 and advised that the mobile home was within the

curtilage of their garden and that she understood it was not in breach of planning law and was used "for our own pleasure purposes, sitting out etc. on a sunny day". The appellant's wife's response makes no reference to the caravan being lived in by anyone else and was clear then about its use.

10. The appellant's wife now says that because she was confused, frightened and worried about the Council's letter and that they might require her to take the mobile home away, she sought professional advice and replied based on the technical wording of the advice received. There is nothing showing on what basis the advice was sought or what advice was given. However, if it was the case that the caravan by then had been lived in by Ms Holmes for over 12 months, I find it difficult to believe that a professional would advise not to declare this was the case given what can be the serious consequences of possibly breaching planning controls. I also find the letter from the Council to be polite and reasonably enquiring, without being threatening or drawing any conclusions about the use of the caravan or any action. Furthermore, it did not suggest that it might need to be removed. Why the Council did not follow up its investigation with a site visit is not clear, but that does not detract from what was declared about the use of the caravan in 2011.
11. All in all, I cannot see why the Council's letter would justifiably have invoked providing information about the way the caravan was being used in 2011 that indicates an ancillary use, which the appellant is now saying was not the case. This contradictory evidence does not show with sufficient clarity that from the material date through to at least March 2011 the caravan was being lived in as a separate planning unit from the main house.
12. I note that Ms Holmes has confirmed in a letter dated 17 July 2020 that one of the Council's photographs taken through the window of the caravan on 12 February 2013 shows her white bicycle and belongings. That may be the case but that does not show she was living there then. Moreover, this is well after the material date. I have also had regard to the fact that Ms Holmes states she lived continuously in the caravan from January 2010 until August 2013, but that runs contrary to the other evidence referred to above. Moreover, the statements made are very sparse and not backed up by any other verifying documentation that might help to show she was living in the caravan for the duration of this period. That might have included bank statements and household bills/documents confirming Ms Holmes's address.
13. I have had regard to all the other appellant's evidence but given my misgivings about the occupation of the caravan in the first part of the relevant ten-year period, I do not need to consider the case any further. The appellant's evidence is not sufficiently precise and unambiguous to satisfy the onus of proof that, on the balance of probability, there has been a substantially uninterrupted independent residential use for the relevant immunity period. Consequently, the ground (d) appeal fails.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN with a correction.

Gareth Symons

INSPECTOR