



Appeal Decision

Site visit made on 18 August 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 20 August 2020

Appeal Ref: APP/C1570/X/20/3248263

Paul's Farm, Little Bardfield, Braintree CM7 4TN

- 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 by Patrick Gardiner against the decision of Uttlesford District Council.
 - The application ref. UTT/19/1674/CLE, dated 21 February 2019, was refused by notice dated 12 September 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 the residential use of 5 no. caravans for over the required 4-year period.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended (the Act), which relates to an application for a lawful development certificate, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Reasons

3. 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 existing development is lawful as a result of immunity from enforcement action by virtue of the passage of time. In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.
4. Section 191(2) the Town and Country Planning Act 1990 as amended (the Act) includes the provision that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
5. S.171B of the Act sets out the time limits beyond which no enforcement action can be taken against breaches of planning control. In the case of building, engineering, mining or other operations in, on, over or under land, no

enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

6. Regarding the definition of a caravan, the Council sum this up as follows:
'primarily a caravan must be movable and designed for human habitation. To be deemed mobile, it is not essential that a caravan be moved on its wheels and axles or by a tow bar. It is enough that the unit can be picked up intact and put on a lorry by crane or hoist'.
7. Furthermore, it is also the case that the siting of a residential caravan normally constitutes a use of land, although it may be in permanent or semi-permanent residential use. If a caravan remains mobile, then it is likely that it does not constitute operational development and that a use of land is involved. I consider these five units do remain mobile, they are intended for human habitation, and come within the definition of caravans rather than operational development.
8. The siting of these caravans for residential use does not constitute any building, engineering, mining or other operation. It is, rather, a material change in the use of the land. Furthermore, it is not a change of use of a building to a single dwellinghouse. It must therefore be seen as some other breach of planning control and the relevant test is whether the use began and has been continuous for at least 10 years before the date of the LDC application – that is, before 21 February 2019.
9. I have seen the five caravans for which the appellant claims immunity from enforcement action, which are clearly shown in red on the aerial photograph submitted. I note there are two other caravans – shown in blue – which are not subject of this appeal.
10. The appellant has put in a number of documents in support of his claim. An invoice dated 30 October 2014 only gives evidence of the supply of a single two-bedroom mobile home to an address other than Paul's Farm that occurred about six years ago. This does not identify the correct site, or demonstrate there have been five residential caravans present for ten years.
11. A letter from Mr O'Malley says that for at least eight years, and possibly as long as ten years, he has noted the presence of several caravans. A letter from Mr Hayward says he has seen caravans on the same positions in excess of five years. However, these letters are by no means precise as to the number of caravans, nor are they specific about their period of presence on the site.
12. I understand a Council officer visited the site and saw caravans in 2013. She understood these were for seasonal workers' accommodation and considered it was not expedient to take enforcement action. However, that does not demonstrate the necessary ten-year period, nor does it identify the number of caravans present.

13. The government's Planning Policy Guidance¹ advises that in the case of applications for existing use, if a 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. In a case of this sort I would expect to see evidence such as tenancy agreements for all the caravans showing continuous occupation over the requisite period, sworn affidavits of their presence and occupation, and records of rents received. No documents of this sort have been put before me.
14. It is unfortunate that the appellant has argued on the basis of a four-year immunity period, when the statutory position clearly points towards a ten-year period. Notwithstanding this, I do not consider the appellant provides evidence of sufficient precision to demonstrate that on the balance of probabilities the caravans have been in continuous residential use for the requisite ten-year period.

Conclusions

15. 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 residential use of 5 no. caravans at Paul's Farm, Little Bardfield, Braintree CM7 4TN 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

¹ Planning Policy Guidance 'Lawful Development Certificates' – Paragraph: 006 Reference ID: 17c-006-20140306.