



Appeal Decision

Site visit made on 7 July 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2020

Appeal Ref: APP/D0840/X/20/3245888

Land at Caroe Bungalow, Otterham, Camelford PL32 9SZ

- 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 Richard Lintell against the decision of Cornwall Council.
 - The application Ref PA19/03726, dated 29 April 2019, was refused by notice dated 30 July 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 existing use of land for the siting of an unrestricted residential caravan.
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Decision

1. The appeal is dismissed.

Costs

2. An application for costs was made by Mr Richard Lintell against Cornwall Council. This application is the subject of a separate Decision

Main Issue

3. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well founded. That turns on whether the appellant can show, on the balance of probability, that the use of the land for the siting of an unrestricted residential caravan, that is used as a separate residential unit, took place more than 10 years before the date of the application, (that is to say, 20 April 2009), and has continued without material interruption thereafter, so as to be immune from enforcement action.

Reasons

4. Caroe Bungalow is set within a large parcel of land and lies in the open countryside. The caravan that is the subject of this appeal is located to its rear.
5. Amongst the evidence submitted in support of the application for a certificate of lawfulness was a statutory declaration (the declaration), made by Harry Lintell, the appellant's son, and Google Earth images, reportedly dating from 2009, 2010, 2017 and 2019. From the evidence, I find that a caravan was placed on the site for the ten years to 20 April 2019; the Council agree with this position. The appellant's final comments state that this was the first part of a two-part application, the other being the unrestricted residential use of the caravan. This was not the case, the precise terms of the application are set out in my header, above.

6. Although paragraph 5 of the declaration states that all groundworks and drainage were completed by October 2007, this does not correlate with attachment HL1¹ to it. This is because the invoice does not specify which site it relates to, and that it relates to plant being hired between 11-14 December 2007.
7. Notwithstanding this discrepancy, the evidence before me suggests that, on the balance of probability, the caravan was on the land and attached to services by 20 March 2008 (the 'start date'). It is this date that the appellant states that he commenced using it for unrestricted residential purposes. Save for the discrepancy, I give the statutory declaration significant weight.
8. Both parties have cited the court decisions in the *Thurrock*² and *Swale*³ cases in their submissions. I agree with the appellant that a degree of caution should be used in the application of case law to individual cases and that, with respect, it is not the submissions made by counsel in *Swale* that carry significant weight, but the judgement handed down. Notwithstanding this, both cases provide principles that must be used in the assessment of this case.
9. Adapting the comment made by Keene LJ in *Swale*, to reflect the change of use that is claimed, the correct question to be asked here is as follows. Has the caravan been used as an independent residential unit, throughout the whole of the ten years preceding the date of the application for a certificate of lawfulness, so that the Council could at any time during that period have taken enforcement action against it?
10. The judgement in *Swale* sets out that where there are gaps in occupation a decision must be reached on whether these are *de minimis*. The comment in the Officer's report that any break in the use of the caravan, other than a very brief one, could amount to the discontinuity of the use does not reflect this judgement. During substantial breaks, the continuous use would have been broken and the Council would have been unable to take enforcement action against the use. There is no need to show that the caravan was put to other uses during such breaks in occupation; it could have had no use at all.
11. The evidence before me shows on the balance of probability that from the start date until some undefined day in April 2015 the caravan was continuously used in the manner claimed in the application. In that month, work commitments took its occupier, Harry Lintell, to Sweden. Since that time, he claims the caravan has remained his "principle [sic] and only residence in the UK".
12. From April 2015, he has occupied the caravan for periods of 2-3 months per year, generally during July and August, Christmas-New Year and a week or so outside these times. He states, without sufficient detail in terms of the manner of this use and the dates or periods of occupation, that the caravan has been used by family members as extra living space when he is away.
13. This, to my mind, shows that there have been substantial breaks in the unrestricted residential use of the caravan. The length of these breaks is materially different from the week-end breaks and factory holidays referred to by Schiemann LJ in *Thurrock* or the substantial holiday referred to by Keene LJ in *Swale*. Indeed, Harry Lintell's use of the caravan post-April 2015 has taken

¹ G Skinner and Son. Invoice 46262, Dated 01/01/2008

² *Thurrock BC v SSE & Holding* [2002] EWCA Civ 226

³ *Swale BC v FSS & Lee* [2005] EWCA Civ 1568, [2006] JPL 886

the form of substantial holidays from Sweden, rather than substantial holidays from the caravan. I do not find that the storage of some of his belongings, he surely would have had the majority of these with him in Sweden, in the caravan was sufficient to perpetuate the residential use during his prolonged absences.

14. In the light of the evidence, during these breaks when for the most part it seems the caravan was empty, the caravan was put to no use. During these periods, irrespective of its appearance, the Council would have been unable to enforce against the unrestricted residential use of the caravan as it would not have been being carried out.
15. I say for the most part, because the statutory declaration refers to the use of the caravan by family members as "extra living space" in his absence. The evidence of the statutory declaration is limited as regards the periods in which it was so used. However, the appellant's statement of case says that the caravan has been used in this way "occasionally". This does not indicate a material decrease in the periods of non-occupation of the caravan during which the Council could not take enforcement action against its residential use.
16. The limited evidence available to me on this matter is imprecise and ambiguous. I cannot be sure that his use of the term "extra living space" does not denote a use that is ancillary to Caroe Bungalow. If used in this manner, it too would break the continuous unrestricted use applied for. For this to be the case, the caravan would need to be sited within that dwelling's curtilage. The planning officer's report does not make a finding in this regard. Nonetheless, given the reported use of the caravan by family members, it was logical for the Council to question whether the caravan was in the curtilage and matters of parasitic use in its statement.
17. As the appellant states, defining the curtilage of a property is a matter of fact and degree. Caroe Bungalow is set back from the public road with a large front garden. Its driveway divides in two a short distance from the road; one goes direct to the bungalow and the other takes a route towards the eastern side of the property, as indicated on Plan RL2 which was submitted with the application. There is a further large area of land to the rear of the bungalow. A sizeable shed, planting, a second caravan and outbuildings loosely separate the bungalow from most of the land to its rear.
18. There are two accesses that can be used by vehicles linking the land at the front of Caroe Bungalow to that at its rear. These are seen in the Google Earth images submitted with the application. The first is the aforementioned eastern drive, the second runs from a hardstanding serving the bungalow across the land to its rear to link with the eastern drive. A surfaced pedestrian path takes a direct route from the rear of the bungalow to the caravan that is the subject of the appeal. There is no gate on any of these accesses.
19. There is no discernible difference in the nature of the land to the front and rear of the bungalow, which appeared to form a single entity. This view is reinforced by the statement in paragraph 1 of the statutory declaration that Caroe Bungalow has a "large curtilage area, with boundary treatments separating the property from the adjoining agricultural land". At my visit, I saw that a timber post and rail fence to the north of the caravan separated the property from what was clearly agricultural land. This appears to be shown on the Google Earth images. The caravan might have its own garden and associated

infrastructure, as claimed in paragraph 1, but, save for an area of decking, there is no clearly defined separation on the land.

20. In the light of the above, I find that the caravan is within the curtilage of Caroe Bungalow. Therefore, the lack of precise and unambiguous evidence regarding the use of the caravan by family members during Harry Lintell's absence is such that I cannot be sure, on the balance of probability, that their use of the caravan is not ancillary to the use of Caroe Bungalow as a dwellinghouse.
21. Given that the caravan lies in the curtilage of Caroe Bungalow, the fact that the appellant's domestic possessions and paraphernalia were in the caravan would be insufficient to allow enforcement action to be taken, as this would normally be considered lawful.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use in respect of existing use of land for the siting of an unrestricted residential caravan 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.

Roy Curnow

INSPECTOR