



Appeal Decision

Site visit made on 2 September 2020

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 October 2020

Appeal Ref: APP/K0235/X/19/3237410

Podington Airfield Farm, Airfield Road, Podington NN29 7JQ

- 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 Simon Whitbread against the decision of Bedford Borough Council.
 - The application Ref 19/01062/LDE, dated 15 May 2019, was refused on 6 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 siting of a mobile home for use as a dwelling.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Costs

2. An application for costs has been made by the appellant against the Council and is the subject of a separate Decision.

Procedural Matter

3. The appellant has provided an alternative red line boundary plan with his appeal documents. Whereas the plan provided with the application to the Council was tightly drawn around the mobile home, the revised plan shows a red line expanded to encompass also a domestic garage and a metal 'utility block'.
4. I understand that both of these buildings are used in connection with the domestic occupation of the mobile home. However, I have little background information relating to them. Moreover, the application made to the Council related to the mobile home only and was determined on the basis of the original plan. The revised plan was provided with the appellant's final comments and was consequently not available to the Council when it prepared its case relating to the appeal. To revise the proposal to include these 2 buildings would be a significant change to what is sought. Accordingly, I have determined the appeal on the basis of the original plan, which related to the mobile home only.

Main Issue

5. The main issue is whether, on the balance of probability, the site was, at the time of the application, lawfully used for the siting of a mobile home for use as a dwelling, having regard to: the period of time the mobile home has been located on the site; its use during that period; the facilities available within it; and the relationship to the wider site within which it is situated.

Reasons

General approach to LDCs

6. Advice relating to LDCs is provided by the Government's Planning Practice Guidance (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. 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. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant.

Time period and use

7. Section 191(2) of the Act states that:

For the purposes of this Act uses and operations are lawful at any time if—

(a) 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); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

8. It does not appear that any enforcement notice was in force at the date when the application for the LDC was made, which is the relevant date for the purposes of this appeal. Accordingly, my decision hinges solely on s191(2)(a).
9. The time periods for taking enforcement action (as referred to in s191(2)(a)) are set out in s171B of the Act. In accordance with s171B(3), the relevant period in this case is 10 years.
10. It seems clear that the mobile home has been in its current location since around 2005, as the appellant claims. Its presence on the site since 2006 is demonstrated by a range of Google Earth photographs, which are not in dispute. The dispute focuses instead on its use.
11. The appellant has provided a range of documentary evidence intended to demonstrate that he has occupied the mobile home continuously during that time. This evidence includes:
 - A number of statutory declarations provided by the appellant and individuals who know him, each of which states that he has lived at the

appeal property (Draper's Lodge) since 2005. The declarations are consistent with one another and I give them weight accordingly.

- Several optician's notes which show his address as Draper's Lodge for the period 2007-2018.
 - A copy of the Freemasons Year Book for 2008-2009, in which the appellant is recorded as living at this address.
 - A receipt for a used car dated 13 July 2007, showing the appellant at this address.
 - An invoice dated 16 May 2006 showing the appellant at this address.
 - A variety of formal/official correspondence and miscellaneous paperwork, all showing the appellant's name and the address of the appeal property.
12. As the Council points out, it is possible that the appellant could have arranged for correspondence to be sent to the site and could have picked it up even if he was not living there. However, there is no substantive evidence to suggest that this has actually occurred, and the correspondence supports the appellant's case in my view.
13. The Council argues that further information, such as details of utility consumption or electoral register details could have been provided. I accept that this would have added further strength to the appellant's case. However, the evidence that has been provided is substantial and detailed and I can see nothing of substance to, in the words of the PPG, 'contradict or otherwise make the applicant's version of events less than probable'. Considering the evidence before me as a whole, I am persuaded, on the balance of probability, that the mobile home at Draper's Lodge has been the appellant's home since 2005. This comfortably exceeds the relevant 10 year period prior to the LDC application on 15 May 2019.

Facilities

14. The Council argues that the mobile home should not be regarded as a dwelling as it does not have the facilities necessary for day-to-day living; specifically, that it lacks washing and shower facilities.
15. There was a small bathroom complete with a toilet, shower and basin in the mobile home when I visited it. The appellant had previously provided a photograph showing these facilities. It was plain from their appearance that they were not recent additions and I accept the appellant's suggestion that mobile homes of this type are normally supplied with such facilities. Thus, on the balance of probability, it appears to me that the unit has had these facilities throughout the period at this site.
16. The metal 'utility block', is located next to the mobile home. It is agreed that this accommodates a shower and washing machine for use by the appellant, something I was able to verify during my site visit. It may well be that the washing facilities inside the mobile home are little used as a result of the facilities in the utility block. However, that does not alter the fact that those facilities are present in the mobile home and I have no reason to suppose that they are fundamentally unsuited to their intended purpose. Even if they are currently faulty, they could be repaired. Consequently, the mobile home cannot

be said to not amount to residential accommodation on the basis that it lacks such facilities.

The wider site

17. The mobile home sits within a much larger site which I understand is used for the appellant's plant hire and storage business. With that in mind, I have considered the submissions of both parties relating to the 'planning unit'. The PPG advises that an LDC application needs to describe precisely what is being applied for and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate.
18. The appellant states in his letter dated 11 May 2018, backed up in his statutory declaration, that he has run a plant hire and storage business from the wider site since around 1990. The Council do not challenge that claim. The site of the mobile home is fully contained by the wider site and is not separated from the rest of the site by any boundary treatment. The boundaries of the wider site are secured and the mobile home can only be reached by the main site entrance. The mobile home is linked to the wider site by the appellant's occupation of it. With these matters in mind, and as a matter of fact and degree, it appears to me that the appeal site is part of a wider mixed-use planning unit, the uses of which include both the business activity and the siting of the mobile home for use as a dwelling. There does not appear to be any dispute that the business use has been in place since before the mobile home was brought to the site.
19. Nevertheless, the appellant seeks a certificate only for one element of the mixed use and only in relation to the small area of land occupied by the mobile home, and I see no reason not to approach the appeal on that basis. The evidence before me focuses on the mobile home only and there is nothing in the relevant legislation or guidance to require every element of a mixed use to be specified. Indeed, the PPG advises that a local planning authority needs to consider whether, *'on the facts of the case and relevant planning law, the specific matter is or would be lawful'*. It also contemplates this type of scenario, advising that, *'where a certificate is granted for one use on a "planning unit" which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use'*. In this instance, the fact that the site boundary is drawn tightly around the mobile home means that there is no prospect of any loss of control of the wider site.
20. The Council raises the possibility that administrative work for the business is carried out in the mobile home. However, the application sought an LDC for the 'Siting of mobile home for use as a dwelling'. From the evidence discussed above and my inspection of the property I can see nothing to contradict the appellant's claim regarding the residential use of the mobile home and therefore the land on which it is sited. Even if the appellant were to have carried out paperwork associated with the business from within the mobile home, that would not mean it was not in residential use and it would not prevent me certifying that residential use is lawful. Furthermore, many people carry out some work from home without that displacing the residential use.

Conclusion

21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the siting of a mobile home for use as a dwelling is not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Peter Willows

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 15 May 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:

On the balance of probability: The mobile home had been stationed on the land and used as residential accommodation as an element of a mixed use of a wider area of land for more than 10 years when the LDC application was made, and the period for enforcement action, as specified within s171B of the Act, had expired; and, at the time of the application, the use did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

Peter Willows

Inspector

Date: 2 October 2020

Reference: APP/K0235/X/19/3237410

First Schedule

The siting of a mobile home for use as a dwelling

Second Schedule

Podington Airfield Farm, Airfield Road, Podington NN29 7JQ

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 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: 2 October 2020

by **P Willows BA MRTPI**

Land at: Podington Airfield Farm, Airfield Road, Podington NN29 7JQ

Reference: APP/K0235/X/19/3237410

Scale: Not to scale

