



Appeal Decision

Site visit made on 25 August 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 October 2020

Appeal Ref: APP/W1850/X/20/3250401

Land and Buildings at The Old Kiln, Little Doward, Herefordshire HR9 6DT

- 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 and Mrs Hughes against the decision of Herefordshire Council.
 - The application Ref 200566, dated 19 February 2020, was refused by notice dated 24 March 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is described as '*All land and buildings situated on the application area have been used continuously for the purposes of a smallholding, pig and sheep rearing enterprise, together with storage buildings and the stationing of a single residential caravan including toilet and shower (hereinafter called the caravan) marked "A" on Exhibit 2 which has been our main and sole residence since the aforementioned date.*'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address, in the banner heading above, from the submitted application form. Section 4 of the application form associated with this case indicates that the appellants applied for an LDC for an existing use. Within that section the appellants have also stated that they consider that the existing use falls within Class C3 (dwellinghouses) of The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). Therefore, the application was made under section 191(1)(a) of the 1990 Act. Notwithstanding the description given on the Council's Decision Notice, I have taken the description of the existing use, in the banner heading above, from section 5 of the LDC application form.
3. Taking into account all of the above, I consider that even though the description of the existing use cites a smallholding, pig and sheep rearing enterprise and storage buildings that the existing use that the LDC is requesting to be certified as lawful is the stationing of a single residential caravan marked "A" on Exhibit 2. I will proceed on this basis.
4. The evidence before me refers to the planning merits of the case but they are not relevant. They are not an issue for consideration in an appeal under section 195 of the 1990 Act, relating to an application for an LDC. My decision will rest on the facts of the case, relevant planning law and judicial authority. The

burden of proof is with the appellants and the appropriate test of the evidence is the balance of probabilities.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

6. It is necessary to consider first, whether the 4 year or 10 year time limit under section 171B of the 1990 Act is applicable in terms of assessing the relevant immunity period and, secondly, whether the development is immune from enforcement action and thereby lawful by virtue of section 191(2)(a) of the 1990 Act.
7. The appellants have stated that the time limit that should apply in this case is the 4 year time limit contained within sections 171B (1) and 171B (2) of the 1990 Act. Section 171B (1) deals with building operations and section 171B (2) with change of use of a building to use as a single dwelling house. Whereas, section 171B (3) pertains to '*any other breach of planning control*' and a 10 year time limit is applicable.
8. There is no dispute between the parties that the building marked "B" (Building B) that surrounds the touring caravan marked "A" (the tourer), both as marked on Exhibit 2, is lawful due to the passage of time. The building operations comprised in the erection of Building B were substantially completed on or before 19 February 2016. I have no reason to disagree.
9. The evidence before me indicates that in 2011 a concrete base was constructed on the site and the tourer was stationed on the base. The appellants have stated that since 27 April 2011 the tourer has been their sole and main residence. Later that year a timber building was erected to enclose the tourer and protect it from the elements.
10. The appellants consider that the tourer has become a structure that is a building. They also consider that the tourer is being lived in and Building B provides a covering and as both structures are inter-connected and inseparable that the entire structure amounts to a single dwelling house. The Council considers that the tourer is a caravan, the stationing of which for residential purposes is a use of the land.
11. Building B appears to have been built and designed to store and protect the tourer. It has been erected with the walls to one side, the front and rear and the roof of that building being close to the tourer. The other side wall is slightly further away from the tourer so that access to the door of the tourer is possible. Its tow bar projects through the front of Building B and there are decorative planters close to and around the tow bar. As such, when viewed from outside very little of the tourer is visible and Building B resembles a shed.
12. There is very little space around the tourer within Building B for any activities to take place. There are some functional items such as batteries and what appears to be a generator stored within Building B adjacent to the tourer. However, there is little to indicate that the tourer could not be used for residential purposes without Building B being in place. In addition, it appears that Building B is a distinct structure to the tourer as it is capable of being

- taken down and removed without the tourer being dismantled. Consequently, it is reasonable to consider on the balance of probabilities that the main use of Building B is for storage and that it is a separate structure to the tourer.
13. A caravan, generally, would not satisfy the definition of a building due to its lack of permanence and attachment to the ground. The appellants argue that with Building B in place that it would take considerable effort and ingenuity to move the tourer. However, the walls of Building B appear to be formed of a timber frame clad with timber boarding, such as used in a garden shed. As such, it is reasonable to assume that removing one or two of Building B's walls to enable the tourer to be moved is unlikely to be unduly difficult or time consuming.
 14. The tourer's degree of attachment to the ground did not appear to me to be great and I noted that the wheels are still in place, albeit at least one tyre has been removed and they do not support the tourer as it is raised up on timber. However, the purpose of the latter appeared to me to provide stability as opposed to being a device aimed at making the structure permanent. Likewise, while there are external stairs outside the tourer's external door, they did not appear to be physically attached to the tourer and so their presence is not a strong indicator of permanence either.
 15. The foregoing factors lead me to conclude that, notwithstanding that Building B has been constructed around the tourer, as a matter of fact and degree it is reasonable to regard Building B and the tourer as separate entities and not one structure. Whilst, the construction of Building B constitutes operational development the tourer falls within the definition of a caravan as defined within section 29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA 1960). That section of the CSCDA 1960 defines a "caravan" as any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any other motor vehicle so designed or adapted.
 16. Therefore, there has not been a change of use of any building to use as a single dwelling house. The stationing of a caravan for residential purposes is considered to amount to a use of land. As such, the 10 year time limit through section 171B (3) of the 1990 Act is the relevant time limit to apply in this case.
 17. Section 191(2)(a) of the 1990 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;*
 18. The appellants have to demonstrate that the existing use of the land and buildings has been used continuously for the *'purposes of a smallholding, pig and sheep rearing enterprise, together with storage buildings and the stationing of a single residential caravan including toilet and shower (hereinafter called the caravan) marked "A" on Exhibit 2 which has been our main and sole residence since the aforementioned date'* since 19 February 2010. In addition, they have to show that the material change in use occurred on or before that date.

19. However, the appellants' evidence undermines this as they have stated that the caravan was stationed on the site in 2011 and they started living in it on 27 April 2011. Consequently, on the balance of probability it has not been shown that the material change of use to a mixed use as a smallholding, pig and sheep rearing enterprise and storage buildings and the stationing of a single residential caravan marked "A" on Exhibit 2 occurred on or before 19 February 2010.
20. I noted on site that an adjoining shed to Building B appears to be used as domestic living space, having a television, sofa, chairs and other furniture in it. However, I have little evidence to indicate when this use of that shed commenced. In any case, an LDC is not sought for the residential use of that shed.
21. The appellants have stated that there were caravans stationed on the site prior to the tourer. However, there is no evidence before me to indicate the length or manner of any residential occupation of those caravans. Consequently, there is no evidence to show that the site was in a mixed use as a smallholding, pig and sheep rearing enterprise and storage buildings and the stationing of caravans for residential purposes before 19 February 2010. It has not been demonstrated that the material change in use of the land is immune from enforcement action.

Conclusion

22. 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 stationing of a single residential caravan marked "A" on Exhibit 2 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.

D. Boffin

INSPECTOR