



Appeal Decision

Site visit made on 10 November 2020

by Thomas Shields DipURP MA MRTPI

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

Decision date: 30 December 2020

Appeal Ref: APP/Z3825/X/19/3238373

Coombe Wood, Forest Road, Colgate, Horsham, RH12 4TB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr P White against the decision of Horsham District Council.
 - The application Ref DC/18/1734, dated 6 September 2018, was refused by notice dated 2 May 2019.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a LDC is sought is "Application to confirm continuous use of land for C3 purposes for a period in excess of ten years".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The use set out on the appellant's appeal form for which a LDC is sought is described as set out in the banner heading above, while on the application form to the Council it was described differently as "siting and use of mobile home". However, it is clear from the appellant's information submitted in support of the application, and his subsequent appeal evidence, that he sought to establish a lawful use of the mobile home (MH) as an independent and separate residential dwelling. The Council determined the application in the same way. Accordingly, I have determined the appeal on the same basis.
3. From my reading of all the parties' submitted evidence, together with my own observations of the MH, I consider it to fall within the definition of a "caravan"¹. Indeed there is no claim that it is not so. As such, an unauthorised material change of use (MCU) involving a caravan on land for residential purposes would be subject to a 10 year period of continuous use for the purposes of claiming immunity in accordance with s171B(3) of the Act, and not 4 years as indicated in the Council's application report and notice of refusal. However, the appellant's evidence at application and appeal stage has sought to establish a 10 year period of use and hence he is not prejudiced by determination of the appeal against the 10 year period.
4. For LDC applications in respect of existing use the PPG² echoes earlier Court judgments as to the approach to be taken with regard to evidence. If a local

¹ Caravan Sites and Control of Development Act 1960 and sections 13(1) and (2) Caravan Sites Act 1968

² Planning Practice Guidance Reference ID: 17c-006-20140306 (MHCLG)

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 probabilities. Accordingly, the appellant must demonstrate that on or before the date of the application (6 September 2018) the MH had been in use as a single residential dwelling for a period of 10 years or more without significant interruption. The relevant date therefore is 6 September 2008.

Main Issue

5. The Council consider that the use of the MH for residential purposes has always been an ancillary one in association with the main dwelling house Coombe Wood, and that the claimed MCU to a single residential unit is not supported by the appellant's evidence. The main issue in this appeal is whether the Council's decision to refuse a LDC was well founded.

Reasons

6. The appellant's evidence is set out in a statement of case (SOC) submitted on his behalf together with Statutory Declarations³, supporting application statement, plans and photographs.
7. A MCU is not defined in any statute or statutory instrument. Whether there has been a MCU is a matter of fact and degree ascertained from the facts and circumstances in any particular case. The Court judgment in *Burdle*⁴ is useful in setting out that it is necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct and occupied functionally for different and unrelated purposes.
8. The MH is located within the grounds of Coombe Wood, a large private estate which appears to be indicated by the blue line on the location plan submitted with the planning application. The estate contains the main dwellinghouse and a number of other buildings which I understand are in use for equestrian, residential and other uses. In terms of physical separation, I note from the submitted evidence that the MH shares the same address as the main house, rather than having its own separate one. Also, while there is an established secondary gated access from Forest Road, this appears to serve the estate along with the main access, rather than purposely providing the MH with its own separate access. Additionally, there are no physical or visual barriers which serve to separate the MH from the rest of the estate. Indeed there are footpath routes which link the various units together including between the MH and the main house. As such, although not a determinative factor by itself the MH appears to be simply one of a number of units in a cluster contained within the wider estate, rather than being physically separated.
9. In terms of functional use the MH was brought onto the land in 2007 by the owner of Coombe Wood (Mr Peter Frederick White) and remains in single ownership with Coombe Wood. I understand that use of the MH for residential purposes first commenced in February 2008 (Mr Turner) ending in August

³ Statutory Declarations: (1) Peter John White, (2) Peter Frederick White, (3) Katalin Keresztes, (4) Zsombor Szentes, (5) Michael Turner

⁴ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

2009. Other than residential use of the main house there is limited information before me regarding the nature and scale of other uses in 2007. However, the appellant's SOC makes clear that Mr Turner's occupation of the MH was for the purpose of providing on-site accommodation for him as a groom employed in connection with the equestrian activity on the estate - it was the equestrian activity which created the need for the MH⁵.

10. Given this need in 2007 for a full time groom the equestrian use may have been more than an ancillary one and hence there may have been a mixed primary residential and equestrian use. Whatever is the case, it seems to me more likely than not that the residential use of the MH during that period was not a separate primary use and planning unit in its own right, but rather it was a minor ancillary use serving the primary use(s) of the larger planning unit of Coombe Wood. The lack of physical and visual separation and single ownership with Coombe Wood are also indicative of that being the case. Consequently, I find that the claimed use of the MH as a separate primary residential use could not have commenced until after August 2009, hence approximately 1 year after the relevant date. Significantly therefore, at the date of the LDC application I find that a 10 year period of continuous use towards gaining immunity from enforcement action cannot be demonstrated.
11. From 2009 to October 2017 the MH was occupied by the owner's son, Peter John White. As set out earlier the onus of proof that there was a MCU to a separate and single dwelling, continuous for 10 years, lies with the appellant. However, the very limited information in his SD simply confirms use as his "sole residence". Having regard to *Burdle*, that is not synonymous with the MH being a separate residential use from the primary use of Coombe Wood. As such his evidence relating to his 8 year period of occupation is imprecise, providing very little clarity as to whether, or to what extent, his residential occupation may have been functionally separated from the wider planning unit of Coombe Wood, to the extent it was a primary use in its own right.
12. From November 2017 the MH has been occupied by two employees. Their SDs also contain very limited information as to the nature of their occupation, simply confirming use as "sole residence". The appellant's SOC states that they are employed by Mr White assisting in the house and within the grounds. On that basis, and with no convincing evidence to establish otherwise, it seems to me more likely that their residential occupation is consistent with the circumstances of Mr Turner's, referred to earlier, such that the residential use of the MH was a minor ancillary one serving the wider primary use of Coombe Wood, rather than being a primary use in its own right.
13. Reference is made (appellant's SOC) to a LDC granted by Eden District Council. However, the facts and circumstances of that case are not identical to those before me and hence I attach no significant weight to it in reaching my decision.
14. It is also argued that "most agricultural worker's dwellings are considered to be independent units of occupation". While that may be the case, "most" does not equate to "all". As such, it is for the appellant to evidentially demonstrate a lawful use in each individual case.

⁵ Appellant's SOC, paragraph 5.1

15. I acknowledge that a lack of documentary evidence, for example Council Tax, rent receipts, and separate utilities, is not alone a determinative factor. However, the provision of such evidence can help towards establishing a lawful use. None has been provided in this appeal.
16. Overall, there is no precise and unambiguous evidence to demonstrate that the residential use of the MH constitutes a MCU through the creation of a single residential unit. Rather, the limited evidence that has been provided points to the use being an ancillary one serving the primary use(s) of Coombe Wood; particularly so during the periods when the MH was occupied by employees. Consequently, use of the MH as a single residential dwelling for a continuous period of at least 10 years has not been demonstrated.

Conclusion

17. For the reasons given above, I conclude on the evidence available to me now that the Council's refusal to grant a certificate of lawful use or development in respect of the siting and use of a mobile home as a single residential dwelling 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.

Thomas Shields

INSPECTOR