



Appeal Decision

Site visit made on 3 March 2021

by P N Jarratt BA DipTP MRTPI

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

Decision date: 24 March 2021

Appeal Ref: APP/V3310/X/20/3261967

Land at Batch Nurseries, Rectory Way, Lymsham, Weston-Super-Mare, BS24 0ES

- 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 Paul Brace against the decision of Sedgemoor District Council.
- The application Ref 31/19/00010/IL, dated 8 March 2019, was refused by notice dated 2 October 2020.
- 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:
 - 1) The change of use of land to use as a caravan site and associated operational development; and,
 - 2) The change of use of a former residential caravan (the residential unit) to a dwelling house and associated operational development comprising of the erection of a single storey extension to the rear of the residential unit;
 - 3) Building operations comprising of the erection of a detached building within the curtilage of the residential unit.
- **Summary of decision: Appeal dismissed**

Procedural Matters

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.
2. For the avoidance of doubt, I should explain that the planning merits of any use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
3. The application for the LDC listed the three parts of the claimed development as set out in the heading above. The Council's decision notice included the first part in full and added to the end of the second part " and the change of use of land to residential use". The third part was deleted in its entirety. The Council advises that the third part of the application was not disputed and was left off the refusal decision notice as this needed to specifically refer, at the First Schedule, to the first two matters over which there is disagreement. The Council states that the omission of this from the refusal has not caused any harm to the appellant. However, I note that the appellant makes reference to this omission in his application for costs which I deal with separately. The

reason for the Council's approach is not irrational and the outbuilding is addressed in the officer's report. I also briefly address this matter in this decision.

4. I note that there has been a considerable amount of discussion between the parties in the determination of the LDC and numerous references to case law. I have had regard to the parties statements and to those cases that are of significance to this appeal.
5. In an LDC the onus of proof rests with the appellant and the level of proof is on the balance of probabilities.

Main Issue

6. I consider that the main issue is whether the Authority's decision to refuse to grant a lawful development certificate was well-founded.

The appeal site and relevant planning history

7. Within the wider site known as Batch Nurseries is a small touring caravan and camping site which between May 2008 and November 2019 was a certified Caravan and Camping Club site, although membership has now lapsed. On the wider site is a dwelling and annex, a static caravan and landscaping business.
8. The plan at appendix PB2 in the statutory declaration dated 5 March 2019 of Mr Paul Brace shows a blue line which contains the caravan and camping site, the subject of this appeal. The site contains roads and hardstandings, an amenity block, some 15 pitches with electric hook-ups with a static caravan that the appellant describes a manager's accommodation, occupying one of the pitches.
9. The plan at appendix PB10 indicates by a green line that part of the site for which a change of use to a dwelling is sought. It contains a mobile home; an extension to the mobile home, a separate outbuilding and a parking area and a small garden fenced off from the caravan and camping site and the adjacent main dwelling. In July 2001, the Council issued an LDC for the 'use of the premises for the stationing of a mobile home for residential use', although this related to a slightly smaller site than shown in PB10. The siting of the more recent mobile home differs from the siting of that approved.
10. A statutory declaration dated 10 September 2019 by P W Withers, owner of the site from July 1988 until November 2018, has been submitted with the appeal and this sets out the chronology of the development of the site.
11. The parties have distinguished the caravan site and the residential site as two distinct planning units. This is a logical approach. I note also that reliance is placed upon undated aerial photographs although a date is attributed to each one by the appellant.

Reasons

Caravan and camping site

12. The first planning unit relates to the site pursuant to the application for an LDC for the change of use of agricultural land with a permitted use as a certified Caravan and Camping Club site to use of land as a touring caravan, motorhome, and camping site with 15 pitches and associated operational development. Certified sites are restricted to a maximum of 5 caravans with

restrictions on length of stay. The appellant states that the claimed use began on 30 June 2006 more than 10 years before the date of the application and that the use has been uninterrupted.

13. The appellant's case is that there has been a material change of use from agriculture to camping and caravanning use over and above the certified site limitations of 5 tourers/10 tents. The appellant argues that the existence of the 15 hook-ups facilitates 15 tourers and this has resulted in a material change of use of the land although I note that hook-ups can also be used in association with camping in tents.
14. Mr Withers statement indicates that the road/tracks were installed in 2002, the caravan bases in 2003, the hook-ups in 2003/04 and the electricity for the amenity block in December 2004/January 2005. However, this time-line conflicts with the aerial photograph dated 17 April 2005 contained in appendix PB3 which does not show any start to the development of the site. Operational development is shown in the photograph of 30 June 2006 at appendix PB4 which shows roads, hardstandings, the amenity building, four tourers, and a larger unit which could be the manager's mobile home. Appendix PB5 of 2 June 2009 shows three tourers and the mobile home. Appendix PW4 shows an oblique view of the site c2007/08 with some eleven caravans/tourers and what appears to be the mobile home for the manager. Appendix PB6 of 14 March 2013 shows three tourers and the mobile home. Appendix PB7 of 15 August 2016 shows ten tourers and the mobile home. PB8 shows 5 or 6 tourers and the mobile home.
15. The submitted photographs show that there has been a breach of the certified site arrangements for 5 caravans and 10 tents on an occasional basis but this does not provide sufficient evidence to demonstrate on the balance of probability that a continuous breach has occurred. I acknowledge that photographs indicate a snapshot in time and that with a camping and caravan site, occupation by caravans and tourers can vary from day to day. Although Mr Withers claims each pitch was occupied between 60-70% of the time during each calendar year this is not supported by the photographic evidence. Additional evidence such as booking records would have clarified occupation numbers and the absence of documentation relating to use of the site is surprising in view of the claimed use of the mobile home by the site manager (and indeed any evidence about persons employed as such).
16. The appellant has submitted caravan site reviews at appendix PB9 (which refers to the site as a certified site) and appendix PB12 and these indicate a low key use consistent with a certified site with only one breach of the licence referred to, through the site being used by a non-club member. These reviews and the letters from previous users suggest a low key operation consistent with a certified site. There is no evidence to suggest that any breaches of the certificate licence were anything other than occasional or that these changes resulted in any intensification such that there was a discernible change in character, including traffic generation, such that a material change of use has occurred. The sporadic breaches would have made it difficult for the Council to take enforcement action as, when the numbers fell below 6 caravans it would be operating within the certification and there would be nothing to enforce as it would represent permitted development.

17. I note that if the site was not operating under its certificate then it would have operated unlawfully in the absence of a licence from the Council under the Caravan Sites and Control of Development Act 1960 except for those exemptions provided for in Town and Country Planning (General Permitted Development) England) Order 2015, as amended. I also note that the site was certificated from May 2008 and the certificate renewed up to November 2019 by the previous owner. The previous owner indicates that certification was sought only for the advertising benefits membership brings. Nevertheless, the absence of a site licence and the continuing certification of the site does not add weight to the appellant's case.
18. The appellant attaches weight to the absence of evidence to contradict the appellant's version of events¹ referring to the Council's assumption that as the site has been certified for up to 5 of their members, when the total falls below 6 then this results in a pause in the continuous use of the site for 15 caravans, relying on the exclusive use of a caravan site by up to 5 caravans by members of an exempted organisation being permitted by Schedule 2, Part 5, Class A of the GPDO. The appellant states that there has never been a designated area reserved for caravan Club members and that the Council should provide the evidence where the site has been used exclusively by no more than 5 caravans belonging to Caravan Club members. However, it appears that the appellant is seeking to justify his own lack of evidence by placing the onus on the Council. Whilst I appreciate that the appellant has only been the operator of the site for a relatively short time, it is still necessary to produce evidence to prove his case on the balance of probabilities. That has not been achieved.
19. It is stated that the previous owner did not have a policy to make the site exclusive to Caravan Club members but this is speculation as to how the site was operated in the absence of any evidence to support the contention.
20. I conclude that the submitted evidence is not sufficiently precise and unambiguous to demonstrate that on the balance of probabilities the lawful use applied for together with the operational development for the amenity block and hardstandings², has been taking place for a period of 10 years without interruption prior to the date of the application to make it immune from enforcement action.

Residential unit

21. The second planning unit relates to the site comprising the mobile home, its extension, separate outbuilding, garden and parking area.
22. In July 2001, the Council issued an LDC for the 'use of the premises for the stationing of a mobile home for residential use', although there is disagreement between the parties over the status of that LDC. The Council state that the caravan was smaller, not located where the caravan is sited and was removed. The current caravan is larger, located on what was agricultural land when the previous certificate was granted and a new (planning) chapter commenced. The Council is of the view that the former residential use of the land for the siting of the caravan that has been removed has been abandoned. It is the case that the plan attached to the 2001 LDC related to a smaller site than shown in PB10 with the bulk of the current appeal site being outside the site of the original

¹ FW Gabbittas v SSE and Newham BC [1985] JPL 630

² Murfit v SSE [1980] and Somak Travel v SSE [1987]

- LDC. I agree with the Council's conclusion in respect of the relevance of that LDC.
23. Aerial photography from June 2006 shows that the original caravan had been replaced with a larger static unit and that there is a discernible boundary around this site.
24. If there has been a change of use of land from agriculture to use for the stationing of a caravan for residential use, then to be lawful it is necessary to show that the use commenced more than 10 years before the date of the application (s171B(3)) and has continued uninterrupted. However, if the operational development of an extension has resulted in the creation of a building as a dwelling in Use Class C3, the period of immunity from enforcement action, and hence lawfulness, is four years (s171B(3)).
25. The appellant's case is that a material change of use of the mobile home to a dwellinghouse occurred when a rear single storey extension was added to create an additional bedroom and that these operations took the residential unit outside the statutory definition of a caravan as set out in s13(1) of the Caravan Sites Act 1968. In his declaration Mr Brace considers on the basis of aerial photographs at appendices PB5 and PB6, the extension was substantially completed between 2 June 2009 and 14 March 2013. However, it is only in appendix PB7 of 15 August 2017 that there is an extension added to the mobile home, and a new outbuilding has been constructed with a parking space adjacent.
26. The extension is a substantially built structure on permanent foundations which has been attached to the mobile home, but it is subsidiary to it in terms of its scale. In this respect it is little different to many 'permanent' additions that occupiers construct to improve the living facilities of mobile homes. This does not necessarily mean that such alterations/additions create a building that satisfies s336(1) and the tests established through case law, such as size, permanence, and the degree of physical attachment to the ground³. Each case is a matter of fact and degree. The mobile home has a brick skirt at its base which appears to be single brickwork construction. No evidence has been provided that this is performing a structural role and therefore I assume that, as with many other mobile homes, it has been built in order to partially insulate the underside of the structure. Similarly, there is no evidence relating to any insuperable reasons why the mobile home could not be detached from the extension and moved. Whilst the extension appears to be a permanent building, it is nevertheless the mobile home that is the significant structure on the site and this does not satisfy the usual tests. I have had regard to the Pugsley case in reaching this view⁴.
27. Although there has been a change of use from agriculture to the siting of a caravan for residential use and that this change of use occurred more than 10 years before the LDC application, it is necessary to consider whether this use has been continuous.
28. The appellant indicates in his statutory declaration that based on information from the previous owner, Mr Withers, the unit was occupied by Mrs Jane Jacobs

³ For example, the case of *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No 2)* [2000] EWCA Civ 5569, JPL 1025

⁴ *Pugsley v SSE & North Devon DC* [1996] JPL124

from 1998 -2007; Mr Ryan Withers from 2007 to 2011 and Mr James Withers from 2007 to November 2018. Since then and the change of ownership, the unit was vacant for repair/redecoration and has been occupied since 21 February 2019 by Mr Greg Jamieson. In general terms considerable weight is attached to statutory declarations but the evidence of the appellant is hearsay, based on what the previous owner told him. Surprisingly, Mr Withers makes no comment about the occupation of the mobile home in his own statutory declaration. Normally, evidence of Council tax and utility bills paid assist in demonstrating continuity of use. I therefore only attach limited weight to the evidence on occupation as I do not consider that it meets the threshold of proof required in this case.

29. The application was for the change of use of a former residential caravan (the residential unit) to a dwelling house and associated operational development comprising of the erection of a single storey extension to the rear of the residential unit. The 'residential unit' has not acquired lawfulness and the extension to it has not made the whole structure a building. Additionally, a period of 10 years continuous use of the land has not been demonstrated.

The outbuilding

30. I now turn to the erection of the outbuilding which the appellant states to be within the curtilage of the residential unit. However, as the change of use of agricultural land to use for the stationing of a caravan for residential use is not found to be lawful, nor is it regarded as a building, it follows that the associated operational development of the extension, hard surfacing and outbuilding are also not lawful⁵ through the application of permitted development rights or by other means, even if the four year limit for enforcement has passed, as the works are intended to facilitate an unlawful use.

Conclusion

31. For the reasons given above I conclude that the Authority's refusal to grant a lawful development certificate in respect of the change of use of the caravan site, to the change of use of the residential caravan to a dwellinghouse and operational development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Formal Decision

32. The appeal is dismissed.

P N Jarratt

INSPECTOR

⁵ Murfitt v SSE & East Cambridgeshire CC [1980] JPL 598.