



Appeal Decision

Hearing Held on 23 March 2021

Site visit made on 24 March 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2021

Appeal Ref: APP/N2739/X/19/3235398

Land at Dunelm Farm, King Rudding Lane, Riccall, Selby YO19 6QL

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development.
- The appeal is made by Mr G Firth and Mrs J Gaskell-Horner against Selby District Council.
- The application (Ref. 2019/0072/CPE) is dated 26 January 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
- The development for which a certificate of lawful use or development is sought is creation of a dwelling, siting of twin unit log cabin and static caravan, and use of land as associated residential curtilage.

Summary decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs made by Mrs J Gaskell-Horner against Selby District Council is the subject of a separate Decision.

Preliminary matters

2. The application and appeal were made by Mr G Firth and Mrs J Gaskell-Horner; however, Mr Firth is now deceased, and it was confirmed in the hearing that the appeal now proceeds in the name of Mrs Gaskell-Horner only.
3. The application form indicates that the certificate (the LDC) is sought in respect of existing uses, to which section 191(1)(a) of the Act applies. However, the development carried out at the site also includes building operations, which I shall consider under section 191(1)(b).
4. At the hearing it was agreed that the appeal should be considered with 'garden' substituted for 'residential curtilage' and the words 'for residential occupation' added to 'twin unit log cabin and static caravan' in the description.
5. While the description of development only refers to the creation of a dwelling, meaning the dwelling occupied by the appellant and her husband, it is relevant to also consider whether the residential use of that dwelling is lawful. In this regard, the Act draws a distinction between operational development and change of use, with differing periods for immunity from enforcement action.

Main Issue

6. Had the Council determined the application, it would have refused to issue an LDC and the main issue is whether that would have been a well-founded decision. This turns on whether the appellant can show, on the balance of probability, that no enforcement action could be taken in respect of the creation of a dwelling and its subsequent residential occupation, the siting of the twin unit log cabin and static caravan for residential occupation, and the use of land as associated garden on the date the application was made.
7. The appellant therefore needs to demonstrate, on the balance of probability, that:
 - Any use of land, including the stationing of a caravan for residential occupation and the residential occupation of a building that does not benefit from planning permission, was instituted on or before 26 January 2009 (the first relevant date) and continued for 10 years thereafter without significant interruption.
 - Any change of use of a building to use as a single dwellinghouse was instituted on or before 26 January 2015 (the second relevant date) and that such use continued for 4 years thereafter without significant interruption.
 - Any building operations were substantially completed on or before 26 January 2015 (the second relevant date).

Reasons

8. The Planning Practice Guidance states "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."
9. The appellant, her husband, and her uncles all previously lived at the original Dunelm Farm, on Main Street, Riccall. The original farm was sold to the Council and the agreement for this, and a subsequent licence, allowed residential occupation to continue there until 28 April 2000.
10. The earliest independent contemporary evidence of anyone living at Dunelm Farm, King Ridding Lane (the Farm) is a letter from the Valuation Office, dated 22 July 2002 and addressed to "The Council Taxpayer". While the letter does not indicate who that was, it was just over a month after the Council's Local Taxation Service had written to one of the appellant's uncles, referring to a "recent change of address" and advising that the District Valuer would need to assess and band the property. However, the Council's letter does not record the uncle's new address and post-dates when the appellant says he and his brother moved to the Farm by approximately 18 months.
11. The Valuation Office's letter backdates the effective date of alteration by over 2 years, to 29 April 2000, the day after the licence to occupy the original farmhouse ended and shortly before when the appellant's statutory declaration (the declaration) says she and her uncles moved to the Farm. However, it is not clear why, or on what evidence, this backdating was made.

Planning unit

12. The appellant considers the planning unit to be the Farm as a whole, in mixed agricultural and residential use, although the application concerns a smaller area, denoted by the red line. The Council considers the planning unit to be smaller, suggesting in the hearing that it is the red lined area. I have considered these views, other evidence given in the hearing and what I observed on site and shall return to this matter as necessary. However, no evidence of an agricultural justification, for example to care for livestock, has been provided for either dwelling. As such, and although living on the Farm has undoubtedly been beneficial to the appellant and her uncles, a clear functional connection between the dwellings and the Farm has not been shown. Accordingly, it has not been demonstrated that they and the surrounding farmland form a single planning unit.

The accommodation occupied by the appellant

13. The declaration indicates that the 2 static caravans occupied by the appellant and her husband have been on the Farm since approximately June 2000. However, it is not stated whether they were within the red line of the application site throughout that period. Emails from 3 people who know the appellant state that she and her husband have lived at the Farm since 2000 but do not confirm whether this was continually within the red line.
14. Additional documentary evidence of the appellant and her husband living at the Farm is in the form of a prescription and a driving licence issued in September and December 2011 respectively. Apart from another driving licence issued in June 2014, all other evidence confirming the appellant and her husband's address is from after both relevant dates.
15. The 2 static caravans are in their current location in an aerial image dated 31 December 2002. However, the image also shows hedgerow trees in leaf and I saw that those trees are deciduous, and were bare, at the time of my site visit. The date of the image is therefore open to question and this evidence is not sufficiently unambiguous.
16. A timber building was later erected to enclose the caravans and the appellant indicates that this occurred in or after May 2003. I saw that this structure is attached to the fabric of the caravans, preventing them from being moved. For this reason, and by virtue of the width of the combined structure, the building operations ceased the use of this part of the site for the stationing of caravans. The timber building can be seen in an aerial image dated 9 May 2007, well before the second relevant date. The evidence therefore demonstrates, on the balance of probability, that the building operation comprising the formation of a dwelling out of the 2 static caravans and the timber structure was immune from enforcement action on the application date.
17. However, the construction of a building only confers use rights, as allowed by sections 75(2) and (3) of the Act, if it is granted planning permission. As no planning permission was granted, the lawfulness of the residential use of the appellant's dwelling must be considered separately. The building was constructed as a dwelling; its use did not subsequently change to use as a dwelling. Accordingly, the 4-year immunity period specified in section 171B(2) of the Act does not apply. In accordance with section 171B(3), to be lawful, the

residential use must have been initiated on or before the first relevant date and continued for 10 years thereafter without significant interruption.

18. Notwithstanding the absence of documentary evidence pre-dating September 2011, the declaration must be given due weight as sworn first-hand evidence. Furthermore, while relevant Council Tax data does not identify this dwelling, the lack of such evidence does not disprove the appellant's claim to have lived in it. Accordingly, it has not been shown to be less than probable that the appellant and her husband have continually resided in the part of the dwelling that existed in May 2007 from before the first relevant date. On the balance of probability, the residential occupation of this part of the dwelling was therefore immune from enforcement action on the application date.
19. The dwelling was later extended, to abut an adjacent agricultural store, to form a dining room. It is unclear how this part of the site had been used before. The May 2007 aerial image appears to show the extension, although the declaration states it was erected in "approximately 2008/2009". The dining room's distinctive décor is visible in photographs posted on Facebook in January 2010. These photographs confirm that building operations had been substantially completed by then. This was before the second relevant date, and the evidence therefore demonstrates, on the balance of probability, that the building operation of the extension was immune from enforcement action on the application date.
20. While the appellant said in the hearing that the use of the extension began on completion of works, the date of "approximately 2008/2009" given for their completion lacks precision. This is of particular concern in the context of the need to demonstrate that the residential use of the extension was instituted on or before 26 January 2009. No documentary evidence of residential use of the extension before January 2010 has been provided. It has therefore not been demonstrated, on the balance of probability, that the residential occupation of the extension was initiated on or before the first relevant date. Furthermore, it has not been demonstrated that the land on which the extension was built was previously part of a planning unit with a lawful residential use.
21. The agricultural store was adapted to form a further extension to the dwelling, comprising a second lounge. The nature and scale of the building operations, including dismantling and re-roofing, indicate that this was a rebuilding, not a change of use, as the appellant confirmed in the hearing. A precise date has not been given for this, but the appellant has indicated it was concurrent with the first extension, approximately 2008/2009, and before her husband's 40th birthday party in March 2010. However, the structure has no roof in the aerial image dated 15 September 2012 provided by the Council, making this aspect of the applicant's version of events less than probable.
22. The structure has a roof in an aerial image dated 29 September 2013, approximately 16 months before the second relevant date, indicating that building operations would have been substantially complete by then. Taken overall, the evidence therefore demonstrates, on the balance of probability, that the building operation of this extension was immune from enforcement action on the application date. However, the residential use of the structure could not have been initiated on or before the first relevant date and the previous agricultural use of the store confirms that the extension was not built on land that formed part of a planning unit with a lawful residential use.

23. When on site I saw a decking area at the eastern end of the dwelling. This is not visible in any of the aerial images or the photographs in the application statement, nor is it mentioned in either party's evidence. Accordingly, I assume it post-dates the application and is not claimed to be lawful.

The accommodation formerly occupied by the appellant's uncles

24. This and the accommodation occupied by the appellant are described as separate dwellings in the application form, the application statement, and in her declaration and final comments. The log cabin provides all the facilities required for day-to-day private domestic existence and no evidence of combined occupation of the accommodation on site by a single household has been provided. Accordingly, the 2 dwellings constitute 2 separate planning units.
25. The declaration indicates that the appellant's uncles moved into a portable building and a static caravan at the Farm before the end of 2000. The building and the caravan are no longer on the site, so I was unable to see them, but there is nothing to suggest they did not afford the facilities required for day-to-day private domestic existence. However, no evidence has been provided to show where they were sited prior to the aerial image of 31 December 2002, which, as noted, is a questionable date.
26. Council Tax reminders and bills from May 2003 onwards are addressed to the appellant's uncles at the address 'Caravan at Dunelm Farm, King Rudding Lane'. The Council confirms that both uncles were registered and jointly liable to pay Council Tax until 12 December 2016 and that, following the death of Ronald Firth, his brother was solely liable to pay Council Tax until his death. There is no evidence that any of the foregoing Council Tax records relate to accommodation other than that occupied by the appellant's uncles.
27. Documents from an application for an agricultural worker's dwelling made in 2007¹ include evidence that contradicts the appellant's case. The Design and Access Statement confirms that the appellant's uncles lived in a prefabricated building at the time, but most of the appeal site is excluded from the land edged red or blue on the location plan. Viewed in isolation, these documents suggest the appellant's uncles may not have lived at the appeal site at that time. However, the location plan is contradicted by Land Registry documents issued in 2018, in which the appeal site and other land outside the blue line on the location plan is included in a land parcel² acquired by the appellant's uncles in 1998. The most probable explanation is that the blue line on the 2007 location plan should have included all the appeal site but was wrongly drawn.
28. The Design and Access Statement also described the application site as remote from any other dwellings, suggesting that nobody was living at the appeal site at the time. However, the officer report on the same application noted "two wooden structures, which are dwellings" to the west. The evidence of the May 2007 aerial image suggests this would have been the timber building occupied by the appellant and the portable building occupied by her uncles. On balance, I am persuaded that the description given in the Design and Access Statement was inaccurate.

¹ 2007/0761/FUL, refused 13 November 2007

² Title Number NYK212198

29. Electricity invoices from Scottish Power, which were sent to the appellant's uncles, confirm supply between July and October 2012, July and October 2013 and January and July 2014. Later invoices from Npower dated 2 June 2015, 14 June 2017 and 15 March 2018 have also been provided. These are addressed to the appellant's uncle, although the latter 2 include "C/o J Harmer", presumably the appellant, in the address. The appellant also signed a form asking Npower to change the account associated with one meter to a domestic tariff on 29 October 2018. Although none of the documents confirm it, I was told that both dwellings are supplied through that meter.
30. The portable building and static caravan are visible in aerial images dated 9 May 2007, 15 September 2012, and 29 September 2013, and in a photograph, annotated 'June 2014' provided by the appellant. While the Council identifies a discrepancy in the reference to a fourth static caravan in the application form, the images indicate that was an error.
31. The photographic evidence of the uncles' accommodation spans a period of approximately 11½ years. However, as noted, the date of the first aerial image is ambiguous and, discounting this, the evidence that the portable building and original static caravan were sited within the red line spans a period of less than 8 years. This is insufficient for the use of land to gain immunity from enforcement action.
32. The photograph annotated 'June 2014' also shows the log cabin that replaced the portable building, and it coincides with the date the appellant states the log cabin was bought. However, this brought about a significant change in the location of the accommodation occupied by the appellant's uncles.
33. The log cabin and the new static caravan are in the position annotated B on the plan accompanying the declaration, whereas the aerial images confirm that the portable building and the original static caravan had been much closer to the appellant's dwelling, midway between points A and B on the same plan. The siting of the original and replacement accommodation do not overlap and while the appellant said the area now occupied by the log cabin and replacement static caravan had been used for car parking for both dwellings, that is not evident from any of the aerial images before me and there is no other evidence of any residential use of this part of the site prior to June 2014.
34. For these reasons, it has not been demonstrated, on the balance of probability, that the part of the site formerly occupied by the portable building and static caravan was used for the stationing of a caravan for residential occupation for a 10-year period without significant interruption. Neither has it been demonstrated that the same use of the area more recently occupied by the log cabin and static caravan was instituted on or before the first relevant date.

The garden area

35. The declaration does not include evidence relating to this part of the appeal site. While the portable building was sited immediately adjacent, no details of any association between the two has been provided. Neither did I see any evidence of direct access from the log cabin to the garden area. In contrast, there is an access route from the decking adjacent to the appellant's dwelling and a fire pit and 3 chairs provide evidence of occasional use. These facts support the view of 2 separate dwellings, each comprising a planning unit.

However, no documentary evidence of when the garden use was instituted, or that it has continued since without significant interruption, has been provided.

36. The garden area is part of a larger grassed area and I saw no indication of a boundary between the two. The appellant's dogs roam the wider area freely, and it is reasonable to assume they do so regularly. However, that does not, of itself, indicate use of the part within the red line as a domestic garden.
37. Accordingly, and while the appellant told me the garden area has been used since 2000, it has not been demonstrated, on the balance of probability, that this use was instituted on or before the first relevant date or that it continued thereafter without significant interruption.

Conclusion

38. For the reasons given, I find there are 2 dwellings within the red line area, each comprising a separate planning unit. Evidence of associated land being consistently used in connection with the residential occupation of the appellant's uncles' accommodation is either absent or not sufficiently precise. Therefore, the relevant planning unit comprises only the living accommodation.
39. The second planning unit comprises the appellant's dwelling. Evidence of associated land being consistently used in connection with the residential occupation of this accommodation is limited and insufficiently precise. In particular, it has not been demonstrated that the planning unit included the land occupied by the dining room and lounge extensions prior to the building operations.
40. The declaration and other evidence demonstrate, on the balance of probability, that the appellant's uncles began living at the Farm on or before the first relevant date and continued to do so until the date the application was made. However, it has not been demonstrated that the part of the appeal site formerly occupied by the portable building and static caravan was used for the stationing of a residential caravan, or in connection with the residential occupation of the appellant's dwelling, for a 10-year period. Neither has it been demonstrated that the use of the area more recently occupied by the log cabin and replacement static caravan, either for the stationing of a residential caravan or in connection with the residential occupation of the appellant's dwelling, was instituted on or before the first relevant date.
41. It has not been demonstrated that the use of the garden area, in connection with either dwelling, was instituted on or before the first relevant date or that it continued for 10 years thereafter without significant interruption.
42. For the reasons given, and on the balance of probability, the building operations comprising the appellant's dwelling as shown in the May 2007 aerial image and its subsequent enlargements to provide a dining room and a second lounge, but excluding the decking, were substantially completed before the second relevant date. Also, on the balance of probability, the residential use of the dwelling as shown in the May 2007 aerial image was initiated on or before the first relevant date and continued thereafter without significant interruption. Accordingly, these operations and use were immune from enforcement action on the application date.
43. Section 193(4)(a) of the Act allows that an LDC may be issued for the whole or part of the land specified in the application; and where the application specifies

two or more uses, operations or other matters, for all of them or some one or more of them. My conclusions indicate that the part of the appeal site formerly occupied by the portable building and static caravan, and the part later occupied by the log cabin and replacement static caravan, should be excluded from any LDC. Similarly, and in view of the absence of evidence, the garden area should also be excluded.

44. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant an LDC was not well-founded in respect of 2 matters. These are the building operations comprising the formation and subsequent extension of the appellant's dwelling, excluding the decking, and the residential occupation of the part of the appellant's dwelling shown in the May 2007 aerial image. The appeal should succeed to that extent and I will exercise the powers transferred to me under section 195(2) of the Act as amended.

Formal Decision

45. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use and existing operations which are found to be lawful.

Mark Harbottle

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 26 January 2019 the operations described in the First Schedule hereto and the use described in the Second Schedule hereto in respect of the land specified in the Third Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The building operations were substantially completed more than 4 years before the date the application was validly made.

The use was initiated more than 10 years before the date the application was validly made and continued for 10 years thereafter without significant interruption.

The building operations and the use do not contravene the requirements of any enforcement notice in force and no enforcement action may be taken in respect of any breach of a planning condition they may constitute.

Signed

Mark Harbottle

Inspector

Date: 26 April 2021

Reference: APP/N2739/X/19/3235398

First Schedule

The construction and extension of the dwelling, as shown in the photograph and floor plan attached to this certificate.

Second Schedule

The residential occupation of those parts of the dwelling excluding the area annotated "dining room" and the larger of the 2 areas annotated "Living" on the floor plan attached to this certificate.

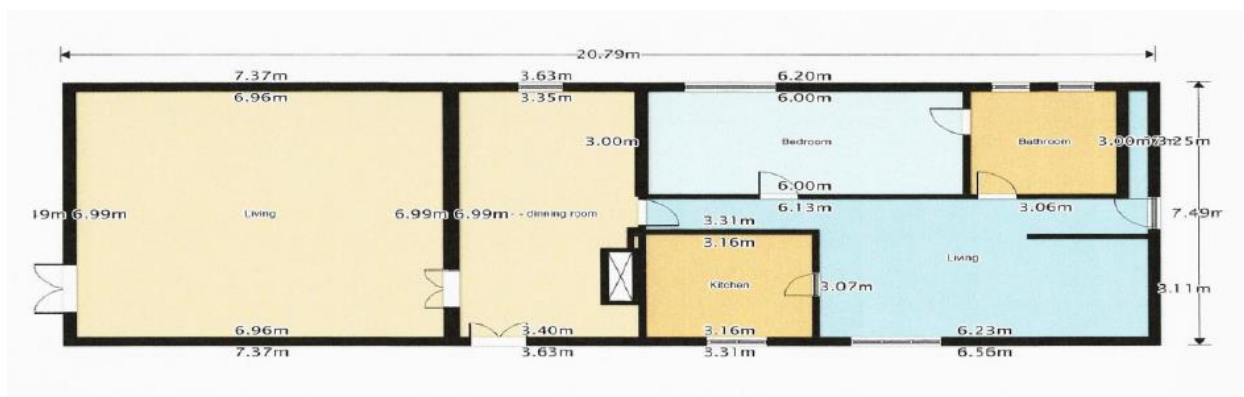
Third Schedule

Land at Dunelm Farm, King Rudding Lane, Riccall, Selby YO19 6QL

Photograph



Floor plan (not to scale)



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 and operations described in the First and Second Schedules taking place on the land specified in the Third Schedule were lawful, on the certified date and, thus, were 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 and operations described in the First and Second Schedules and to the land specified in the Third Schedule and identified on the attached plan. Any use or 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: 26 April 2021

by Mark Harbottle BSc MRTPI

Land at: Dunelm Farm, King Rudding Lane, Riccall, Selby YO19 6QL

Reference: APP/N2739/X/19/3235398

Not to Scale

