



Appeal Decision

Site visit made on 5 July 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/J1860/X/20/3260042

Douglas Castle Bungalow, Post Office Lane, Kempsey WR5 3QW

- 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 David Martin against the decision of Malvern Hills District Council.
 - The application Ref 20/00752/CLE, dated 5 June 2020, was refused by notice dated 26 August 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 described as 'Lawful Development Certificate for existing independent residential use of caravan for over ten years'
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the description of the existing use in my banner heading above from the appeal form since this more clearly describes what is applied for.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded. Pursuant to section 195 of the Town and Country Planning Act 1990 as amended (1990 Act), my decision is whether the Council's refusal was well-founded, not the reasons for that decision. Thus, it is proper that I consider additional information at appeal stage which was not before the Council when it took its decision.

Reasons

4. Section 191 of the 1990 Act states that if a person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application to the local planning authority for a certificate of lawful use or development.
5. In a lawful development certificate (LDC) appeal, the onus of proof is firmly upon the appellant to make their case on the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence. If the Council has no evidence of its own to contradict or otherwise make the appellant's version of events less than probable, there is no good

reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous. The appellant needs to show that the proposed development would have been lawful at the date of the LDC application - planning merits of the development are not relevant.

6. Section 57 of the 1990 Act states that planning permission is required for development of land. Section 55 of the 1990 Act then states that development is operational development or the making of a material change in the use of land. The stationing of a caravan is a use of land and does not of itself represent operational development. Although the appeal site caravan has a boot room attached, this appears to be a light weight structure and, along with the skirting on the caravan, could be relatively easily removed. As such, I find as a matter of fact and degree that these have not resulted in sufficient annexation that would render the caravan a building for planning purposes.
7. Consequently, in the absence of any evidence that the location of the caravan on the appeal site falls outside of the residential planning unit, siting of the caravan would only represent development requiring planning permission if it is shown to be occupied as a separate residential unit, rather than as part and parcel of the main residential use. The appellant submits that the caravan has been in use as a separate unit for more than 10 years¹ and that the use is therefore lawful since no enforcement action can be taken in respect of that use pursuant to section 171B(3) of the 1990 Act.
8. The question to be determined then is whether on the evidence before me, it has been shown on the balance of probabilities that the caravan has been in separate independent use for a period of ten years or more. If this is so demonstrated, there will then have been a material change of use which is immune from enforcement action.
9. The appellant's evidence is in the form of aerial photos showing the caravan in position from 2010, along with an affidavit from the appellant stating that he has 'lived in the mobile home/caravan' for 'over ten years'. The appellant's statement indicates that the appellant prepares and eats his own meals in the caravan and is able to live and sleep separately. I saw at my site visit that the caravan has its own kitchen and bathroom facilities. I noted also that the garden used by occupants of the main dwelling has been separated from the garden space used by the occupant of the caravan by a low picket style fence. Parking for the caravan is available to the front of the caravan, as it is for the bungalow. The appellant apparently provides no support to his father and vice versa, and gas bottles for cooking are purchased separately by the appellant.
10. The Council comments that the caravan and main dwelling are in use by family members and the siting of the caravan means that access could easily be made to the garden of the main dwelling, and inside that dwelling if the rear patio doors were open. It was also noted by the Council at the date of its site visit that the height and condition of the grass in the bungalow and caravan gardens appeared to be the same. The Council points to the fact that there is no demarcation of parking spaces as between the caravan and main dwelling. It highlights that there is no evidence as to separate utility bills for the caravan and main dwelling, and no record of the caravan for Council tax purposes.

¹ The application form states that the use began on 1 March 2010

11. In my view, the main substantive evidence submitted by the appellant, being the aerial photos and affidavit do not show on the balance of probabilities that the caravan has been independently occupied for the 10 year period. The photos demonstrate only that the caravan has been in situ and the affidavit does not specify that the caravan has been independently occupied for that period, and nor does it give detail as to the how much time the appellant spends in the main bungalow, bearing in mind the family connection.
12. I note that utility bills are apparently sent to the main dwelling as the appellant had understood that it would not be possible to obtain a separate postal address without confirmation of the caravan as a separate residential unit in planning terms. However, very little detail is given as to the arrangements regarding utility bills in terms of separation of charging and payment arrangements; copies of the utility bills sent to the bungalow in respect of the utilities used by the occupant of the caravan are not provided. No evidence is submitted either in respect of separate payment of Council tax for the caravan.
13. I acknowledge that the caravan has its own facilities and the separation of the gardens, and that the Council does not have evidence of its own as to how the caravan is occupied in connection with the main dwelling in practice. Nonetheless in view of the family connection and as a matter of fact and degree, I do not consider that the evidence presented by the appellant is sufficiently precise and unambiguous to justify the granting of a certificate.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that the appeal should therefore fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

V Bond

INSPECTOR