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## Appeal Decision

Site visit made on 19 August 2021

**by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 August 2021**

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**Appeal Ref: APP/A2525/X/21/3272346**

**Caravan C1, Fields Farm, Bridge Road, Sutton Bridge, Spalding, PE12 9SN**

- 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 Syd Smith against the decision of South Holland District Council.
  - The application Ref H18-0920-20, dated 14 October 2020, was refused by notice dated 11 February 2021.
  - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
  - The matter for which a certificate of lawful use or development is sought is described in the application as "an existing use", namely "permanent residential use of a caravan."
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### Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the matter constituting failure to comply with conditions which is considered to be lawful.

### Procedural, background and preliminary matters

2. A site visit was not strictly necessary, as my decision is based on evidence of the history of the use of the site. However, I was visiting the area in connection with another appeal and therefore viewed this site unaccompanied, from the adjoining track. I did not enter the site itself but saw the site context and the caravans on it.
3. Notwithstanding the terms of the application referred to in the heading of this decision, it is apparent from the 'Planning Statement' submitted with it that an LDC is sought to certify that the failure to comply with conditions is lawful. That is the basis upon which the Council determined the application and responded to the appeal.
4. In March 1999, planning permission Ref H18-1219-98 was granted for the use of the overall site as a site for caravans for seasonal workers and its retention out of season for storage of caravans. That permission was subject to:

Condition 1 - "The caravans shall only be used for accommodation outside the period of 1st December to 5th April in the following year and that accommodation shall only be used for seasonal workers employed in farming operations on land in the same occupation."
5. Following the refusal of application Ref H18-0691-03, made under section 73A of the 1990 Act, an appeal was allowed in October 2004 (the 2004 permission)

to continue the use without complying with condition 1 of permission Ref H18-1219-98, but subject to:

Condition 1 – “The caravans shall only be used for accommodation for seasonal workers employed in farming under the Seasonal Agricultural Workers Scheme (SAWS), or any successor scheme, and such persons shall only work on land in the same ownership or occupation”; and

Condition 2 – “No person shall occupy any of the caravans for more than six months in any period of one year.”

6. When the SAWS scheme ended, a further section 73A application Ref H18-0224-18 was made to regularise the position. This was granted in May 2019 (the 2019 permission), subject to:

Condition 2 – “The caravans shall only be used for accommodation for agricultural and/or horticultural workers employed in farming by Hargreaves Plants, and such persons shall only work on land in the same ownership or occupation.”

That permission did not remove condition 2 of the 2004 permission, which restricted occupation to no more than 6 months in any period of 1 year.

7. The appellant purchased the site from Hargreaves Plants Ltd in June 2020.
8. Section 191(4) of the 1990 Act permits the modification of the matter described in the application. Having regard to all the above, the matter should be described as:

“The permanent residential occupation of caravan A4, being a caravan sited in the location edged red on the application plan, by a person other than an agricultural worker employed in farming by the owners or occupiers of the land in breach of conditions 1 and 2 of the planning permission granted under Ref H18-0691-03 and condition 2 of the planning permission granted under Ref H18-0224-18.”

9. Whilst the wording of condition 2 of the 2019 permission differed from that of condition 2 of the 2004 permission, the substance of the restriction remained the same, and the appellant’s case is that this substantive restriction has been breached for the requisite period.

### **Main Issue**

10. The main issue is whether the Council’s refusal of an LDC is well-founded. This will turn on whether the appellant has proved on the balance of probability that the caravan has been in permanent residential occupation by a person other than an agricultural worker employed in farming by the owners or occupiers of the land without significant interruption, for any period of 10 years prior to 14 October 2010<sup>1</sup>.

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<sup>1</sup> This is the date of the LDC application.

## Reasons

11. My assessment of the evidence is made in the context of advice in the Planning Practice Guidance that:

*"...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."*

The word "sufficiently" is important. When dealing with events over several years, it may be unrealistic to expect absolute precision and a complete absence of any ambiguity.

12. A Statutory Declaration (SD) from Mr Steven Giles has been submitted. Unfortunately, though it bears the date 23 September, no year is stated. However, it was submitted to the Council with a 'Planning Statement' dated October 2020 and 2 other SD's dated 23 and 24 September 2020. I am satisfied that Mr Giles' SD was sworn on 23 September 2020. The key points in that SD are that:

- he has lived in caravan C1 continuously since 10 October 2009;
- he paid a monthly rent to Hargreaves Plant Ltd and then to the appellant when he purchased the site in 2020;
- throughout his occupation, he has not been employed by either Hargreaves Plant Ltd or the appellant; and
- he knows Mr Leonard, who was already occupying another caravan on the site when Mr Giles moved in, and Mr Rooney, who moved into another caravan on the site in August 2010, both of whom have remained in continuous occupation since then.

13. An SD from Mr Leonard, dated 24 September 2020 confirms Mr Giles moved into caravan C1 in October 2009. Mr Rooney's SD dated 23 September 2020 indicates Mr Giles was already living in caravan C1 when Mr Rooney arrived in August 2010. Both confirm that Mr Giles remained living in caravan C1 continuously up to and including the dates of their SDs.

14. Though not exhibited to Mr Giles' SD, a copy of a short rental agreement has also been submitted. This is for his tenancy of caravan C1 *"commencing on (date) 10-10-09 and ending on (date) N/A at a rental of £180 per month."*

15. There is also a single "rent collection form" dated 5 December 2008 recording the collection of one payment of £45 from "Giles" for caravan C1. The Council makes no comment on this, but that rent collection predates the start of the tenancy. Furthermore, the 'Planning Statement' submitted in support of the LDC application says, *"in this instance the use commenced in August 2008"*, but later that rent has been paid for caravan C1 *"since August 2010."* This introduces an element of ambiguity, but only really serves to suggest that Mr Giles may have occupied at some time prior to the start of his tenancy agreement and continuous occupation in October 2009. In any event, as indicated, Mr Leonard swears that Mr Giles has occupied caravan C1 since October 2009 and Mr Rooney swears that Mr Giles was there when he arrived

in August 2010. None of the evidence suggests less than 10 years' occupation prior to the LDC application.

16. Finally, there is a written statement from Emma Garner. She says she was the Office Administrator for Hargreaves Plants Ltd from 2001 until 2019, when the company went into administration and throughout her employment, Mr Giles was never employed by Hargreaves Plants Ltd. The statement begins, "*I...Do solemnly and sincerely declare...*" and ends, "*I hereby...confirm that to the best of my knowledge the above is a true and accurate statement.*" However, this statement is not witnessed by a person authorised to administer oaths and it does not therefore carry the weight of a SD. Nevertheless, though Ms Garner's statement does not confirm any details of Mr Giles' occupation of the caravan, it corroborates one important element of his evidence, and I attach significant weight to it.
17. More extensive and recent records of rental payments was requested by the Council and would have been helpful. I do not know why they were not provided, but the absence of such corroborating details does not render the sworn evidence insufficiently precise or unambiguous.
18. Mr Giles could be subject to prosecution and a serious penalty if his statement were shown to be false in a material particular. In addition, any LDC based on such false evidence could be overturned. Accordingly, I attach substantial weight to Mr Giles' SD. Furthermore, his sworn evidence is corroborated by 2 other sworn statements from people equally liable to prosecution.
19. The other documentary evidence referred to above is limited, but it generally corroborates Mr Giles' SD, aside from the anomalous date in the rent collection form, and even that just adds to the potential period of occupation in breach of the conditions. Against this, apart from a concern about the absence of greater detail, the Council notes that documents accessed at Companies House relating to the administration of Hargreaves Plants Ltd state that the administrators were exploring selling all the caravans on the site in September 2019 and February 2020, but no reference is made to any persons still occupying the caravans. Without more detail, that is insufficient to displace the sworn and unsworn evidence before me, or to make the appellant's version of events less than probable.
20. I am satisfied that the appellant's evidence is sufficiently precise and unambiguous, and it is not seriously contradicted by other evidence. The appellant has proved on the balance of probability that the caravan has been in permanent residential occupation by a person other than an agricultural worker employed in farming by the owners or occupiers of the land without significant interruption, for a period of more than 10 years prior to 14 October 2010.

## **Conclusion**

21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development was not well-founded and that the appeal should succeed. This was in respect of the permanent residential occupation of caravan C1, being a caravan sited in the location edged red on the application plan, by a person other than an agricultural worker employed in farming by the owners or occupiers of the land in breach of conditions 1 and 2 of the planning permission granted under

Ref H18-0691-03 and condition 2 of the planning permission granted under Ref H18-0224-18.

22. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*J A Murray*

INSPECTOR



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# 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

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**IT IS HEREBY CERTIFIED** that on 14 October 2020 the matter described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The caravan has been in permanent residential occupation by a person other than an agricultural worker employed in farming by the owners or occupiers of the land without significant interruption, for a period of more than 10 years prior to 14 October 2010.

Signed

*J A Murray*

Inspector

Date 27 August 2021

Reference: APP/A2525/X/21/3272346

## ***First Schedule***

The permanent residential occupation of caravan C1, being a caravan sited in the location edged red on the plan attached to this certificate, by a person other than an agricultural worker employed in farming by the owners or occupiers of the land in breach of conditions 1 and 2 of the planning permission granted under Ref H18-0691-03 and condition 2 of the planning permission granted under Ref H18-0224-18.

## ***Second Schedule***

Land at Caravan C1, Fields Farm, Bridge Road, Sutton Bridge, Spalding, PE12 9SN

## 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 matter described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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.



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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 August 2021

**by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor**

**Land at:** Caravan C1, Fields Farm, Bridge Road, Sutton Bridge, Spalding, PE12 9SN

**Reference:** APP/A2525/X/21/3272346

Scale: DO NOT SCALE

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