



Appeal Decision

Site visit made on 22 November 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal Ref: APP/W3330/X/21/3279394

Swaynes, Stoke Road, Meare Green, Stoke St Gregory, Taunton TA3 6HY

- 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 Peter Matravers against the decision of Somerset West and Taunton Council.
 - The application Ref: 36/20/0027/LP, dated 16 November 2020, was refused by notice dated 15 June 2021.
 - The application was made under section 192(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 as a dwellinghouse within Use Class C3 without restriction.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. 'Swayne's is a large mobile home sited on land that was originally part of the garden of the neighbouring property known as 'The Cottage'. It had temporary three-year planning permissions granted in 1988 and 1991. In 1994, permanent planning permission was granted for "*Siting a mobile home*" (LPA Ref: 36/94/0010). That permission was subject to one planning condition stating "*This permission shall enure for the benefit of Mrs E.M. Gregory only and not for the benefit of the land. On cessation of the aforementioned occupancy the mobile home shall be removed, and the land returned to its former use/condition*".
3. The afore-mentioned Mrs Gregory died on 9 February 2010. After that, 'Swaynes' was occupied by Mrs Gregory's daughter and son-in-law until his death in 2014. The daughter-in-law continued to live at 'Swaynes' until August 2018, when 'Swaynes' and 'The Cottage' were sold to the present owners.
4. The appellant's case that 'Swaynes' is an unrestricted C3 dwellinghouse is threefold. First, that over time, and more than ten years ago, the mobile home became a building, and it was occupied as a permanent dwelling for over ten years. Secondly, that a material change of use occurred when 'Swaynes' became a building with a C3 use separate from 'The Cottage', also over ten years ago. Thirdly, that the original occupancy condition has been breached for over ten years. In all three cases, it is put that the time limit for taking enforcement action has expired and the use applied for is therefore now lawful

and unencumbered by any occupancy restriction. These are the main issues which I shall consider to reach a view about whether the Council's decision to refuse the LDC was well founded.

5. The application has been made for a proposed use under s192(1)(a) of the 1990 Act. However, the arguments made about events already having occurred, such as the caravan now being a building and its residential use, as well as the time limits referred to and the potential immunity from enforcement action, means that the application should have been made under s191 of the 1990 Act. I therefore agree with the Council on this point. Nevertheless, like the Council did, I shall consider the evidence on its face and make my decision accordingly. This is less of an issue because I am not granting the LDC.
6. The consideration to be given to the appeal is a legal determination that does not have regard to matters of planning merit. The onus to make out the case in legal grounds of appeal rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

Building

7. There does not appear to be any dispute that when the mobile home arrived at the site it did not meet the definition of a caravan in the Caravan Sites and Control of Development Act 1960 (CSCDA 1960). Therefore, despite its large size, this factor alone does not show that it is now a building. This issue therefore turns on whether the caravan has lost its mobility having regard to its attachment to the ground and its permanence.
8. The lean-to extension/porch added to one side of the caravan is attached by the wooden batten mounted at eaves level which supports the joists that hold up the corrugated Perspex roof. However, other than that, the roof and other parts of the wooden extension, such as the door frames and sections of timber panelling, merely abut the caravan. It is not built into the caravan and it is a lightweight structure that could very easily be detached. The extension is also attached to the adjoining double garage, but it is the extent of the attachment to the mobile home that is the issue here.
9. The extension also only functions as a covered space which does not contain anything integral or essentially needed for living such as a kitchen or bathroom. These are still contained within the original caravan. Thus, the extension has not affected the mobility of the mobile home or its status as being a structure designed or adapted for human habitation.
10. I saw the brick chimney/flue, the gutters, and down pipes and that the caravan is attached to mains services, including a sewerage connection. However, most large 'static' caravans have such features, and they are easily detachable. Looking underneath the caravan I saw that it is secured by chains, but this is again very common to prevent the unit moving in high winds for example. The caravan could be readily delinked from its securing points. I also saw that the unit is supported on what appears to be original jacks and the subframe with axles and sets of wheels are still in place.
11. Against this background, whilst the extension itself as operational development is probably immune from enforcement action and I appreciate that the caravan has been in place for over 33 years, none of what has been added to it means

that the original unit is no longer mobile. Moreover, given that the burden of proof rests with the appellant, there is nothing to substantiate that the mobile home is not capable of being moved from one place to another. Whilst its appearance is not an essential test of mobility, it is still easily identifiable as a large static/park style home, particularly given its elevation by about 2 feet off the ground and the identifiable subframe, axles and wheels. Having a separate postal address has no bearing on whether the caravan has progressed to become a building.

12. I have had regard to the appeal decision referred to by the appellant (Ref: APP/D0840/X/21/3269674). However, the extension attached to the caravan in that case appeared to be significantly larger and more integrated than is the case in this appeal. The other appeal decision therefore carries little weight.
13. For these reasons, as a matter of fact and degree, the caravan is not a building. It is still a caravan. I therefore do not need to consider the length of time that it has been residentially occupied. This evidence does not show, on the balance of probability, that a dwellinghouse within Use Class C3 is lawful.

Material Change of Use

14. I note what the appellant says about the 1994 planning permission and the misgivings over the precise effects in planning terms over what was granted. The appellant goes on to give their interpretation of what the 1994 planning permission allowed. Nevertheless, in the context of what has been applied for in this appeal, the crux of the appellant's case is that a material change of use occurred when 'Swaynes' was converted to a permanent building and a C3 residential use separate from 'The Cottage' and the use of land for the siting of a residential caravan. However, given that I have found 'Swaynes' is not a building, while Mrs E. M. Gregory was in occupation, she was living in a caravan in accordance with the condition on the planning permission.
15. Reference is also made to the creation of a separate planning unit. However, the reason for imposing the condition on the 1994 planning permission refers to its relationship to 'The Cottage'. The Council has also drawn attention to what appears to have been an ancillary relationship to the main house taken from evidence submitted with an earlier LDC application. Furthermore, although the land where the mobile home and the adjoining garage are has now been firmly fenced off from 'The Cottage', the 2018 photographs show only a low fence between the mobile home and the main part of the garden to 'The Cottage'. The fence appears to stop short of the steps into the caravan on the side wall next to 'The Cottage' garden, thus there was no barrier to persons going from the mobile home across to 'The Cottage'.
16. Against this background, it is not clear that there was any new planning unit created possibly until more recently. Moreover, the caravan was occupied up until 2018 for residential purposes in the residential garden to 'The Cottage'. Given that the residential use of a caravan is a use of land, it seems likely to me that the occupation of the mobile home was consistent with the existing use of the land. Also, given that a residential use was taking place within a residential garden, and bearing in mind what I set out above, there does not appear to have been any material change to the character of the land. Thus, despite what the appellant asserts about a sui generis use, there was no material change of use.

17. All in all, the appellant has not made out their case on this point.

The condition

18. I have already found above that what is on the site is still a caravan that meets the definition under the CSCDA 1960. A residential use of a caravan is a use of land. It is not a building or therefore a dwellinghouse. As such, considering whether there has been a breach of the condition on the 1994 planning permission would be tantamount to making a finding on an application under s191(c) of the 1990 Act. However, what was applied for, irrespective of whether the application should have been under s191 or s192, was a dwellinghouse in Use Class C3. I also note that the background information submitted to the Council in support of the application did not advance the immunity argument related to a breach of the condition.
19. Under s191(4) of the 1990 Act, if on an application under this section I am provided with information satisfying me of the lawfulness at the time of the application of the use, operations or other matter described in the application, or a description that could be modified or substituted, I may issue a certificate to that effect. However, that is a discretionary power which does not permit me to grant a LDC for something totally different to what was applied for. Finding that there had been a failure to comply with the condition on the 1994 planning permission could, in this case, only lead to a finding about lawfulness related to the 1994 planning permission. Such a finding would, to my mind, be fundamentally not the same as seeking to establish the lawfulness of a structure which might have become a building and had then had a material change of use to a dwellinghouse within Use Class C3. The starting and end points for considering each type of case are entirely different. I therefore decline to exercise the power under s191(4).
20. The evidence about breaching the condition is not relevant to this LDC application and it does not go to showing that there is a dwellinghouse within Use Class C3. If necessary, the breach of condition issue should be subject to a separate application to the Council. As an aside, I make no criticism of the appellant for making the case out that the condition has been breached, because they were probably responding to this being in the Council's reasons for refusal of the LDC. Nevertheless, it is not an issue for consideration now.

Conclusion

21. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a dwellinghouse within Use Class C3 without restriction 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.

Gareth Symons

INSPECTOR