



Appeal Decisions

Site Visit made on 10 August 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2021

Appeal A Ref: APP/R3650/X/21/3267733

Lower Punchbowl Farm, Hyde Lane, Churt, Farnham, GU10 2LR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Steven Domm against Waverley Borough Council.
- The application ref WA/2019/0322 is dated 27 January 2019.
- 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 was described as "the temporary use of a caravan for the construction of a barn".

Summary Decision: The appeal is dismissed.

Appeal B Ref: APP/R3650/X/21/3267737

Lower Punchbowl Farm, Hyde Lane, Churt, Farnham, GU10 2LR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Steven Domm against Waverley Borough Council.
- The application ref WA/2020/0289 is dated 13 February 2020.
- 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 was described as "to replace existing caravan been on site for excess of ten years, not development".

Summary Decision: The appeal is dismissed.

Applications for costs

1. Applications for costs were made by Mr Steven Domm against Waverley Borough Council. These applications are the subject of separate Decisions. They also relate to appeal reference APP/R3650/C/20/3251487 relating to an enforcement notice that has been withdrawn.

Preliminary Matters

2. Appeals A and B relate to applications for LDCs under section 192 of the Town and Country Planning Act 1990 as amended (the Act). As a result, they seek to determine whether the proposed development would be lawful were it to be instituted or begun on the relevant date. The relevant date for ascertaining whether the proposed development would be lawful is the date of the LDC application. The relevant dates in these cases, therefore, are 27 January 2019 for appeal A and 13 February 2020 for appeal B.
3. I note that section 192(4) of the Act states that the lawfulness of any use for which a certificate is in force shall be conclusively presumed unless there is a

material change, before the use is instituted, in any of the matters relevant to determining such lawfulness. A material change may be where building works are only allowed to be carried out in a set period by a planning permission for a development to which the LDC directly relates. In that case, although lawful on the date of application, that use would not be lawful if it were to begin on a later date.

4. At the time of application for the caravans under appeals A and B I understand that the appellant had not decided what form the caravan proposed would take. However, for the purposes of both appeals I will proceed on the assumption that they will comprise caravans as defined in the Caravan Sites Act 1960.
5. I note that the Council refer to the structure on the site and on which there is dispute as to whether it was a caravan or a dwellinghouse. This was subject of an enforcement notice that has been withdrawn¹. My attention has been drawn to a previous LDC for a caravan on the site. I understand that would have been a timber structure in two halves and that, at that time, it was accepted by the Council that it would have constituted a caravan. It is not clear whether that structure was the same as that referred to in the withdrawn enforcement notice. For the purposes of these appeals I do not need to determine whether the structure on site is a caravan.
6. The appellant suggests that there is discretion to grant planning permission for the caravan as an LDC had previously been granted. It is unclear from where this discretion may be derived. Section 177(1)(a) of the Act, linked to appeals under section 174(2)(a) of the Act, gives discretion to grant planning permission in respect of matters stated in an enforcement notice as constituting a breach of planning control. However, as the enforcement notice was withdrawn there is no appeal under section 174 of the Act, so that discretion cannot apply in this instance.
7. The Council has indicated that had it determined the LDC applications they would have been refused.
8. In the case of LDCs the burden of proof is on the appellant, with the relevant test of the evidence being on the balance of probability.

Main Issues

9. The main issue in both appeals A and B is whether, had the authority refused the application, their refusal would have been well-founded.

Reasons

Appeal A

10. The appellant suggests that a caravan could be provided during construction of a barn on the site, under Class A, Part 5, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This enables provision of a caravan in the circumstances listed in paragraphs 2 to 10 of Schedule 1 of the Caravan Sites Act 1960, subject to a condition that the use is discontinued when those circumstances cease to exist, and all caravans on the site are removed as soon as reasonably practicable.

¹ Subject of appeal reference APP/R3650/C/20/3251487

11. Paragraph 9 of Schedule 1 of the Caravan Sites Act 1960 relates to the provision of a caravan on land which forms part of, or adjoins, land on which building or engineering operations are being carried out if that use is for the accommodation of a person or persons employed in connection with the said operations.
12. I understand that the appellants intention was to occupy the caravan whilst he constructed a barn on the site. That barn was subject of a prior notification under Part 6, Schedule 2 of the GPDO to which approval was given by the Council on 16 October 2015 under reference AG/2015/0016. That is subject of a condition at Class A.2(2)(vi)(aa), Part 6, Schedule 2 of the GPDO that was reflected in the decision of the Council that the development must be carried out within a period of five years from the date on which approval was given.
13. I noted on site that works have commenced on the construction of a barn, with some earth works carried out and materials, particularly steel that may be intended to form the frame, stored on the site. It appears that works have been taking place over a long period of time. The caravan would only be lawful when works were taking place.
14. The relevant date of the application for the LDC was within the 5 year period beginning on 16 October 2015 during which the works to construct the barn had to take place. As such, it is possible that works would have been taking place on the building on the relevant date. However, given the lack of progress with the building I consider this to have been unlikely. Consequently, on the balance of probability, the caravan would not have been lawful on that date.
15. For these reasons, I conclude that had the Council refused the application for an LDC their refusal would have been well-founded. Appeal A must, therefore, be dismissed.

Appeal B

16. I note that the application form suggests that the proposed caravan would replace a previous caravan that had been on site for in excess of ten years. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be precise and unambiguous, even if there is no evidence to contradict it. In this case, little evidence has been provided relating to the previous caravan. Consequently, that evidence is not precise nor unambiguous so it is not possible to assess whether that would have been lawful prior to its replacement.
17. I understand the appellant considers the caravan to have been required for agricultural purposes, for which planning permission is granted under Class A, Part 5, Schedule 2 of the GPDO. It is not necessary, therefore, to consider whether there is evidence that the caravan had been on the site for a period in excess of ten years, only whether the replacement caravan would comply with the requirements of the GPDO.
18. As set out above, Class A, Part 5, Schedule 2 of the GPDO enables provision of a caravan in the circumstances listed in paragraphs 2 to 10 of Schedule 1 of the Caravan Sites Act 1960, subject to a condition that the use is discontinued when those circumstances cease to exist, and all caravans on the site are removed as soon as reasonably practicable. In this case, paragraph 7, Schedule 1 of the Caravan Sites Act 1960 relates to a requirement of a caravan

site for accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation.

19. The Council suggest that there are no agricultural operations taking place on the land. However, it is clear that parts of the land are used for growing grass and making hay, which is a form of agricultural production. Nevertheless, it is unclear which seasons, if any, would require occupation of a caravan on the land for that purpose. It is unclear what agricultural operations would have been taking place on the relevant date. The onus is on the appellant to demonstrate that the proposed development does not constitute a breach of planning control. In this case, the evidence relating to the agricultural use of the land is not precise or unambiguous. Consequently, on the balance of probability, siting of a caravan was not required to house temporary seasonal workers for agriculture at Lower Punchbowl Farm on the relevant date of 13 February 2020.
20. For these reasons, I conclude that had the Council refused the application for an LDC their refusal would have been well-founded. Appeal B must, therefore, be dismissed.

Formal Decisions

Appeal A

21. The appeal is dismissed.

Appeal B

22. The appeal is dismissed.

AJ Steen

INSPECTOR