



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2022

Appeal Ref: APP/L3815/X/21/3275600

Melita Nursery, Chalk Lane, Sidlesham, Chichester PO20 7LW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr W Hughes against the decision of Chichester District Council.
 - The application ref SI/20/02735/ELD, dated 22 October 2020, was refused by notice dated 17 May 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is construction and use of a building as a single dwelling-house falling with use class C3.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Counsel for the appellant has pointed out that when the LDC application was submitted to the Council it was stated that it was for an existing use. However, the case being made was not a breach of planning control consisting in the change of use of a building. Rather, the case being put then, and now, is a breach of planning control consisting in the carrying out without planning permission of building operations to construct a building by way of a single dwellinghouse. As such, I agree that at section 5 of the application form the description given could have been "Construction of a single dwellinghouse (Use Class C3)". Nevertheless, it is clear from the appellant's statement at the application stage that this is basis on which the application was made, and the Council has been able to consider the appellant's case accordingly. This clarification does not therefore present a procedural problem for me, the appellant, or the Council.
3. Under s171B(1) of the 1990 Act no enforcement action may be taken against a breach of planning control consisting in the carrying out without planning permission of building operations after the end of the period of four years beginning with the date on which the operations were substantially completed.

Main Issue

4. In view of the above, the main issue is whether the construction of a single dwellinghouse (Use Class C3) was substantially completed for at least 4 years by the date of the LDC application. The material date will therefore be 22 October 2016. The burden to make out the case rests firmly with the appellant and the test of the evidence is the balance of probability.

Reasons

5. By way of background the appeal building started life as a twin unit caravan originally granted planning permission in 2006. The caravan has then been extended first on the south end to create an L-shaped structure, and later on the northern end and off the east side. The later north and east extensions were added between 2016 and 2018 and what was there in 2018 is what is still there now. I shall consider the southern extension first.
6. The appellant asserts that by at least 2010 an extension had been added to the south of the caravan such that the overall size of what was there exceeded the size limits of a caravan defined in the Caravan Sites Act 1968 (CSA68) and it comprised of three sections. As such, the development on the site had become a building which was a dwellinghouse that had been substantially completed for more than four years by the date of the LDC application. On this basis, a LDC could/should be granted for the footprint of the structure without the two more recent extensions. The timeline for when the extensions were added is based on aerial photographs submitted by the appellant.
7. The first aerial image dated 10 April 2010 shows an L-shaped footprint with what is most likely to be the original twin unit mobile home orientated north-south with an apex roof. It is not clear to me what comprises the east-west arm of the 'L' off the southern end. The next image dated 3 May 2013 also shows the presence of something off the south end of the caravan that, although it appears different, it seems to match the dimensions of what is shown in April 2010.
8. However, the next aerial image of 16 April 2014 shows something materially different that is longer and wider with several horizontal lines at a 90-degree angle to the caravan that might be either timber floor or roof joists. It seems likely to me that there was at the very least some form of building operation at this end of the caravan. The next photograph dated 28 April 2016 shows an extension which appears to match the footprint of what was being constructed in 2014. By then though the joists had gone and in their place is an apex roof with a hipped west end that cuts back into the sloped roof of the caravan. That form of roof is shown in later aerial photographs in 2018 and 2019 and is also in what appear to be recently taken images showing the elevations of the structure. Based on this evidence it is probably the case that the extension now on the south elevation was started before April 2014 and it was in place by the end of April 2016.
9. I recognise that this timeline is at odds with the earlier 2010 substantial completion date claimed by the appellant. However, my finding accords with a similar undisputed assessment set out in the Council's delegated report on the LDC application about when an extension was added to the south side of the mobile home. Moreover, as a matter of fact and degree, I consider that the aerial photographs bear out such a finding.
10. With regard to the meaning of 'substantially completed' established in *Sage v SSETR & Maidstone BC* [2003] UKHL 22, in the case of building operations, what is required is 'a fully detailed building of a certain character'. As set out in the 'Preliminary Matters' section above, the application is for the construction of a single dwellinghouse and, as referred to in the earlier 'Main Issue', that needs to have been substantially completed by no later than 22 October 2016. In this case, there is evidence that an extension was built on the south

elevation of the caravan and that appears to have been there since before the material date.

11. However, whilst it is alleged that in 2010 a southern extension had three bedrooms and a bathroom, and there was internal access from the original sections to the new section via a corridor, there is nothing to show what was inside the extension that was in place by 2016 or whether it was integrally connected to create one building that could be construed as a single dwellinghouse. Also, a building cannot be regarded as substantially completed for the purposes of s171B(1) even if outstanding works affect only the interior. The aerial photographs shed no light on this matter. There are, for example, no photographs showing the inside of the building around 2016 or before, and nothing from the occupiers to confirm that they were living in a substantially completed single dwellinghouse by the material date or earlier.
12. Therefore, albeit before the material date the southern extension took the original caravan outside of the CSA68 definition and a building had been created, the appellant's evidence is not sufficiently precise and unambiguous to show that, as a matter of fact and degree, a single dwellinghouse (C3) had probably been substantially completed by at least the material date.
13. I accept that the internal accommodation there now is as shown on a layout plan, and photographs taken at ground level correspond with the external appearance of the structure as shown on elevation drawings. Nevertheless, these current circumstances do not assist the appellant's case. I also note that the Council has granted LDCs for use as single dwellinghouses relating to other former mobile homes on the site. However, I have no details about the circumstances of those and, in any event, each application must be considered on its individual merits.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction and use of a building as a single dwellinghouse falling with use class C3 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