
Appeal Decision

Site visit made on 16 February 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 March 2022

Appeal Ref: APP/Y9507/X/20/3264164

Land at The Ranch, Water Lane, Angmering BN16 4ER

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs J Morley against the decision of South Downs National Park Authority (SDNPA).
- The application Ref SDNP/20/03501/LDP, dated 19 August 2020, was refused by notice dated 13 October 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 is to use the land for the stationing of a caravan for occupation by a travelling showperson.

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters and Main Issue

1. The appellant sought, by way of application under section 192 of the Act, to establish whether the proposed use of land for the stationing of a caravan for occupation by a travelling showperson would have been lawful if begun at the time of application (the relevant date), being 19 August 2020.
2. 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. 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.
3. The SDNPA has suggested that the appeal needs to be brought by the applicant in order to be valid. This is because section 195 of the Act states that only the applicant may by notice appeal to the Secretary of State. Mr Morley submitted the application and Mrs Morley is shown as the appellant on the appeal forms. The SDNPA do not object to Mrs Morley as appellant. However, the Statement submitted on behalf of the appellant refers to a Mr Long. It is unclear where that name has come from, although the appellant suggests it is a typographical error. In any event, given the name of Mrs Morley on the appeal form and that she clearly wishes me to proceed with her as the appellant, I consider the appeal should proceed on that basis.
4. The use described does not specify how the travelling showperson would use the caravan. For clarity, I understand the caravan would be used as a dwelling.

5. The appeal site is subject of an enforcement notice issued on 9 May 2019 that alleged the material change of use of Land to residential and the construction of a structure for the purposes of human habitation. That was subject of an appeal¹ where the Inspector determined that the structure did not fall within the definition of a caravan under the Caravan Sites Act 1968. As a result, the use proposed differs from that subject of the enforcement notice.
6. Section 57(4) of the Act states that where an enforcement notice has been issued, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out.
7. Planning permission was granted on 8 February 2016 for the change of use of part of the tarmac road for siting of one showperson's caravan as a dwelling². It is common ground that use was implemented. The SDNPA suggest, however, that there was an intervening use between that use ceasing and that subject of the enforcement notice starting, relating to the storage of a caravan. The SDNPA have also suggested that the land has since been used for the grazing of sheep, an agricultural use. I shall return to this in my reasoning.
8. I note the site plans for this appeal, that subject of the planning permission granted in 2016 and the enforcement notice all indicate different areas. The planning permission related to a small area of tarmac on the site. The enforcement notice alleged a material change of use on a wider area, which reflects the area of the current application. The enforcement notice also identified a smaller area where the structure for the purposes of human habitation was located. I will need to identify the appropriate site prior to determining whether the proposed use would have been lawful on the relevant date.
9. The appellant suggests the requirements of the enforcement notice under-enforce the development that took place. Under section 173(11) of the Act, they suggest this has resulted in planning permission having been granted for that part of the use alleged by the enforcement notice. The appellant suggests that comprises the material change of use of the land to residential. However, that use differs from that subject of this appeal. On that basis, it would not be appropriate to consider this further. It is open to the appellant to apply to the Council for a separate determination under sections 191/192 of the Act regardless of the outcome of this appeal.
10. Taking account of the above, the main issue is whether the decision of the SDNPA to refuse the LDC was well-founded in relation to the lawfulness of the use of the land for the stationing of a caravan for residential occupation by a travelling showperson.
11. My attention has been drawn to a number of court judgements, including *Young v Secretary of State for the Environment (SSE)* [1983] JPL 465; [1983] JPL 677, *Newland v Secretary of State for Communities and Local Government (SSCLG)* [2008] EWHC 3132 (Admin), *Impey v SSE* [1981] JPL 363; [1984] P&CR 157, *Welwyn Hatfield Borough Council v SSCLG & Beesley* [2011] UKSC 15 and *Jennings Motors Ltd v SSE & New Forest District Council* [1982] 2 WLR 131; [1982] JPL 181. I have taken these into account in coming to my decision.

¹ Appeal references APP/Y9507/C/19/3228664 and APP/Y9507/C/19/3228665

² Planning permission reference SDNP/14/06164/FUL

Reasons

The site

12. It is suggested that the area of application for the LDC would be the planning unit. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. The concept of physical and functional separation is key. The area covered by a planning permission is not necessarily determinative of the planning unit.
13. The appellant is seeking to ascertain whether it would have been lawful, on the relevant date, to use the land for the stationing of a caravan for occupation by a travelling showperson. The site plan submitted with the LDC reflects that of the enforcement notice. This suggests that the appellant considers that to be the correct planning unit for the site. As set out above, the site of the planning permission was on a small section of the area. That was a similar, but different, area to that identified as containing the structure identified in the enforcement notice.
14. Given that the appellant seeks to rely on section 57(4) of the Act that they can revert to a use for which the land had lawfully been used prior to the issue of the enforcement notice, the only part of the site on which a mobile home could be located must be the area identified on the planning permission. As a result, that must be the correct area for consideration in this case.
15. For these reasons and for the purposes of the LDC, I need to consider the area subject of the 2016 planning permission as the area on which stationing of a travelling showperson's caravan for residential occupation may be lawful. I will, therefore, use the plan submitted with the planning application in considering the use of land and to attach to any LDC should the appeal be successful.

Use of land

16. The SDNPA suggest that the construction of the structure subject of the enforcement notice was in the same area as use of land for siting of one showperson's caravan as a dwelling approved in 2016. However, the plans indicate the permission on a slightly different, albeit overlapping, area to that identified on the enforcement notice plan. The Inspector in the appeal against the enforcement notice indicated that the structure was too large to be a caravan and constructed of more than two sections but appears to have otherwise complied with the definition of a caravan as defined in the Caravan Sites Act 1968. It is unclear whether any other physical changes have occurred to the land. On that basis, I consider that the prior use rights were not lost through the construction of this structure and issue of the enforcement notice.
17. The SDNPA suggest that the planning permission for siting of a showperson's caravan as a dwelling was implemented and occupied by a Mr Cox. However, that caravan was removed from the site around the time Mr Cox left in October 2018. It is common ground that another caravan was subsequently moved onto the site. The appellant suggests this was occupied residentially between October 2018 and March 2019 and that there is a council tax amended bill for that period, although that hasn't been supplied with the appeal. No other evidence has been submitted to support this assertion.

18. The SDNPA suggest that the caravan brought onto the site on or after October 2018 was stored on the site, rather than being used for residential occupation. A written submission with an application³ relating to an LDC for a caravan to be residentially occupied by an agricultural worker indicated that a caravan had been stationed on the tarmac. However, it did not specify how or whether that mobile home was used. I note the names given on that application appear to be the same as the appellants on the enforcement notice relating to the structure for residential occupation. That suggests they intended to occupy the site residentially.
19. The ordinary use of a caravan is for residential occupation. I accept there are times and situations where caravans are stored on land, but not used residentially. Nevertheless, in this particular case the evidence indicates that the owners of the land always intended to occupy the land residentially, either within a caravan or the structure subject of the enforcement notice. The evidence is not conclusive that they did so between Mr Cox's occupation and works beginning on the structure subject of the enforcement notice. Nevertheless, my decision has to be made on the balance of probability. On that basis I consider that the mobile home was intended to be used residentially, even if that use was not active.
20. It is unclear whether the owners of the land following Mr Cox were travelling showpeople. There were no conditions limiting occupation of the land to travelling showpeople on the planning permission granted in 2016. It is unclear whether the caravan would have been occupied by travelling showpeople, had it been occupied. However, the use of land by people other than travelling showpeople would not be material change of use, so this would not affect my conclusions in relation to the lawful use of the land.
21. I note that a Planning Contravention Response Notice was completed and returned by the landowner on 25 January 2021. That stated that a caravan had been temporarily stored on the site between 30 October 2020 until 17 January 2021 but had been removed. However, that use is after the relevant date for this appeal.
22. For these reasons, I consider that the land was lawfully used for the stationing of a caravan intended for residential occupation before the development subject of the enforcement notice had not been carried out. Consequently, on the relevant date it would have been possible to revert to that previous use as set out at section 57(4) of the Act.
23. Since the structure subject of the enforcement notice was removed, part of the site subject of the enforcement notice has been enclosed by stock proof fencing and I understand some sheep have been grazed on the land. That would be an agricultural use, which is a use that would not require planning permission. However, it is unclear the exact area used for this and, in any event, is unlikely to include the tarmac area given that would not be capable of being grazed. On the balance of probability, I consider any agricultural use would have taken place on land other than that subject of the planning permission for the caravan residentially occupied by a travelling showperson.

³ LDC application reference SDNP/20/01700/LDP

Conclusion

24. 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 in respect of the use of the land for the stationing of a caravan for residential occupation by a travelling showperson was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

25. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

AJ Steen

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 19 August 2020 the operations 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 would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Planning permission was granted on 8 February 2016 for the change of use of part of the tarmac road for siting of one showperson's caravan as a dwelling under reference SDNP/14/06164/FUL. That planning permission was implemented. An enforcement notice dated 9 May 2019 alleged the material change of use of Land to residential and the construction of a structure for the purposes of human habitation. As there was no other material change of use between the use of part of the tarmac road for siting of a showperson's caravan as a dwelling and issue of the enforcement notice, under Section 57(4) of the Town and Country Planning Act 1990 planning permission is not required for its use for the purpose for which it could lawfully have been used if the development subject of the enforcement notice had not been carried out.

Signed

AJ Steen

INSPECTOR

Date: 03 March 2022
Reference: APP/Y9507/X/20/3264164

First Schedule

Use of the land for the stationing of a caravan for residential occupation by a travelling showperson

Second Schedule

Land at The Ranch, Water Lane, Angmering BN16 4ER

NOTES

This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

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

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

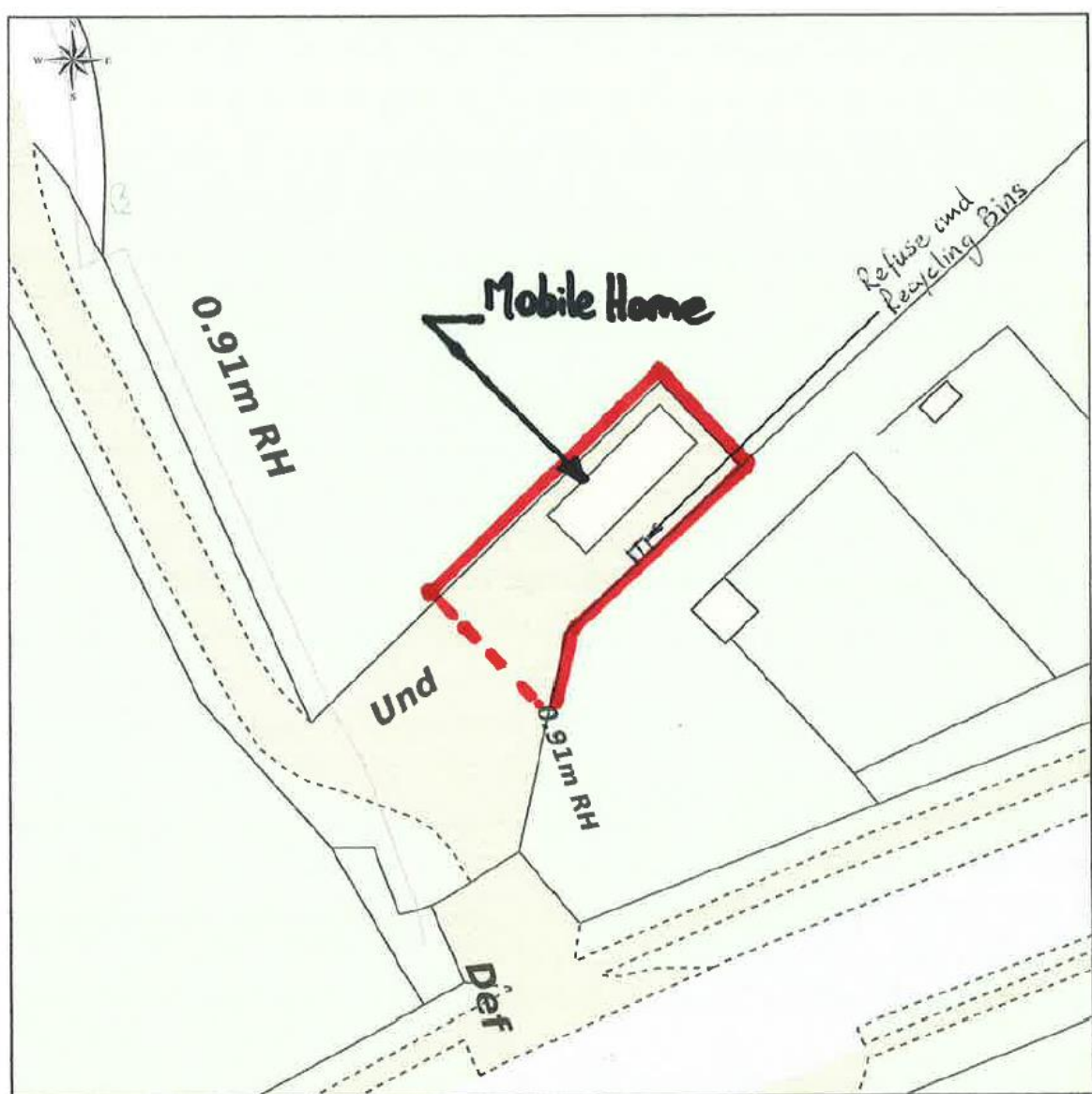
This is the plan referred to in the Lawful Development Certificate dated: 03 March 2022

by AJ Steen BA (Hons) DipTP MRTPI

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Not to scale



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