



Appeal Decision

Site visit made on 1 March 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2022

Appeal Ref: APP/U1430/X/20/3262456

Cairds Camping & Caravan Site, Battenhurst Road, Ticehurst, TN5 7DU

- 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 Ms N Seeney against the decision of Rother District Council.
 - The application Ref RR/2020/170/O is dated 20 January 2020
 - 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 applied for is described as '*Caravan as a residential dwelling and the mobile farm shop as a shop*'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the application stage the mobile farm shop, as part of the LDC claimed, was removed from the application. I am not, therefore, required to make a determination as to the lawfulness of this particular element and, accordingly, I have limited my assessment to that of the single caravan located to the west of the site, close to the boundary with Battenhurst Road.
3. A caravan, being movable, is not a building, and the siting of a caravan is normally undertaken to facilitate a material change in the use of the land. As such, the wording "*residential dwelling*" used on the application form is not here applicable. A more appropriate description in this instance would be the stationing of a caravan on the land for residential purposes.

Background

4. S171B(3) of the 1990 Act as amended says that where there has been a breach of planning control, other than that specified under s171B(1) and (2) no enforcement action may be taken after the end of ten years beginning with the date of the breach.
5. On this basis the appellant must successfully demonstrate, on the balance of probability, that any breach of control commenced ten years before, ie prior to 20 January 2010 ("*the material date*") and has continued since.
6. The caravan, with a substantial tent attached which is seemingly being used for domestic storage purposes, is positioned on a grassed area of land between the timber-framed farm shop and a stable block beyond, close to the access track off

Battenhurst Road, and forms part of a much wider site to the east shown on the site plan submitted to accompany the application. Both pieces of land are in common ownership and the wider site appears to be in use for horse grazing and stable buildings exist in this connection.

7. The extent of the facilities within the caravan are not disputed by the two main parties and, from my site inspection, I am satisfied that it is occupied for habitable purposes, particularly with the storage space facilitated by the attached tent structure. The area of land ringed red in this appeal, although relatively small, clearly though goes beyond the limits of the caravan itself.
8. The appeal site lies adjacent to an identified area of land, also contained within the wider site which, in 2015, was the subject of a planning permission (ref RR/2015/633/P) granted for a campsite with a maximum of fifteen pitches. The campsite area is demarcated by open fencing and at my site visit I observed one of the glamping pods within which lies close to the common boundary.
9. The government's planning practice guidance advises that precision in the terms of any certificate is vital so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. A certificate of existing use must include a full description of that use or operations for which it is granted. The certificate needs to spell out the essential characteristics of the use so as to define it with precision, and this should flow from the applicant's description of the development actually carried out during the ten year period and as set out on the application form.
10. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. With the test of the evidence being on the balance of probability the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

11. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

12. In this particular instance the Council has refused to grant a LDC because it considers that the appellant has not, on the evidence advanced, sufficiently demonstrated that the land has been continually used for the stationing of the existing static caravan for residential accommodation for the requisite period of ten years.
13. In his Statutory Declaration (SD) dated 24 June 2020 Peter Seeney, who previously occupied the caravan for some seven years, indicates that the area of land within the red line is that area used by its occupiers, as they usually park their cars in this area during the summer months.
14. The evidence points to the caravan being first stationed on the land in 2006, and its occupation from August 2007 until the appeal was lodged in November 2020 is

not disputed by the main parties. Peter and Susan Seeney were the first occupants, vacating the caravan in November 2014. Subsequently, there have been three separate occupations. Jonathan Edwards and Barbara Stockford resided there until June 2015 when Christopher and Lisa Heritage replaced them. The Heritages stayed until June 2017 when Nicholas and Alison O’Gallagher took over, and it is understood that they remain in occupation.

15. The appellant indicates that in 2009 the caravan was moved from its original position behind the hedgerow to its current location. Although it appears that the caravan’s original placing also falls within the red ringed site this is not necessarily of relevance given, as mentioned, its use for habitable purposes constitutes a use of the land.
16. In the Court of Appeal judgement of *Restormel BC v SSE & Rabey* [1982] JPL 785 it was held that it was not possible to decide whether a material change of use had occurred without knowing the purpose for which the caravan was used and whether the purpose fitted in with the existing use of the land.
17. In the current case I am satisfied that, in addition to the adjacent campsite, the land has a wider equestrian use, with planning permission having been granted in 2002 for the erection of four stables and a feed store. More importantly, from the evidence highlighted below, the caravan has served as a residence to facilitate the security of the site as a whole.
18. In illustration, a letter dated 7 February 2012 from Mr & Mrs Seeney to Nicholas Ide of Rother District Council’s planning department refers to the caravan and states:

"We bought the caravan in 2006 and sited it at Cairds. We then started living in it in 2007 when we realised that we had security issues at the site."
19. Following an e-mail dated 27 May 2014 from Matthew Worsley of the Council to Mr & Mrs Seeney, the Seeney’s response of 1 June 2014 states:

"With regard to the touring caravan to the north of the site....we can confirm that this is for warden occupation for the campsite but originally served as warden occupation a number of years ago for the land and stable block due to break-ins on site and more recently loss of property (a very expensive trailer). As you can imagine when our camp site is occupied it is important on grounds of health and safety to have someone on site 24 hours a day to deal with any issues."
20. The above is reiterated in both a Statutory Declaration dated 24 June 2020, sworn by Peter Seeney, and also letters to the Council dated 27 May 2015 and 11 March 2019. The former states *"With regard to the caravan permanently sited (not on the certificated site) Rother District Council is aware of this and that this is used for warden accommodation and has been on site for a number of years"*, and the said letters saying that there has been a caravan permanently sited here since 2006 for residential and security use.

21. The appellant has also produced a letter from Mick Candler, dated 8 January 2019, which concurs with Peter Seeley's claims and states:

"I can confirm that since the date of them moving into the caravan, the caravan has always been used for residential accommodation/security wardens accommodation by either themselves or other family and friends who have taken over the warden role."

22. Christopher Heritage, in his SD of 24 June 2020, however, suggests things changed and states (point 5):

"Myself and my wife have never been employed by the campsite in any capacity. Therefore we did not have a contract of employment or receive any payments from the campsite. The caravan was for the sole purpose of being our home."

23. Mr Heritage's wording though, save for the tenses 'was' and 'is', given that Nicholas O' Gallagher now occupies the caravan, is identical to that of point 4 within Nicholas O'Gallagher's SD, dated 25 June 2020. This strongly suggests corroboration between these persons. Further, also adduced are a series of additional SDs from Peter Seeney, Susan Seeney, Alison O'Gallagher, Nicholas O'Gallagher, Michael Candler, Lisa Cooper and Matthew Unstead which, variously dated throughout December 2019 and January 2020, likewise also show largely standardised wording.

Conclusions

24. Taking the evidence as a whole, notwithstanding the said standardised SDs, there are inconsistencies in the accounts given, such as Christopher Heritage's SD being at odds with Peter Seeney's and Mick Candler's accounts, as cited above. Further, some personal recollections, where more than one written piece has been submitted, are themselves contradictory.
25. The crux of the matter is that the caravan appears to have been closely connected with the site's security, for both the horse related use and, more recently, that of the campsite. Certainly, Peter Seeney refers to this role, and although the subsequent occupants, Mr Edwards and Ms Stockford, were not contactable, and the Heritages and O'Gallaghers say that that they have never been employed by the campsite in any capacity and have received no payments, the Seeneys' occupation continued until more than four years after the material date.
26. In the circumstances I consider that had it not been for the security function the caravan provided it is unlikely that it would have been brought onto the land in the first instance. As such, I am of the view that the caravan has served the primary use(s) of the land in an ancillary capacity and, importantly, I would suggest that its introduction to the land did not likely constitute development such that a material change in the use of the land would have occurred at the time. Any material change in this instance would have involved a change from that for the keeping of horses to a mixed use to also include an independent residential element.
27. The caravan may have previously been, and is now, the sole residence of the caravan's occupants but, given that its use in an ancillary capacity has eaten into

the ten year period of occupation from January 2010, any material change of use in planning terms would have occurred subsequent to the material date.

28. On a related point I am not convinced that the application site as defined by the appellant is credible. The red line is somewhat arbitrary and has not been fully justified, despite Peter Seeney's explanation as to vehicles relating to the residential use being parked within the confines of the site shown. The appeal site is not a separate planning unit in its own right. In illustration, I have explained the stationing of a caravan for residential use refers to the use of land rather than the use of the caravan itself and, for the reasons I have mentioned, it must relate instead to the wider area of land. As such, the appeal site identified here serves no purpose in planning terms and does not aid the appellant's case.
29. On the face of it I am not though convinced that the Council's Reason for Refusal fully encapsulates the actual main issue. The evidence does suggest that the caravan has been used for residential accommodation throughout the requisite ten year period, but that does not necessarily mean that this has constituted a use in its own right, separate and independent from the main use(s) of the wider site.
30. Given my findings, whether or not the current use is unauthorised is not for me to attempt to make a definitive judgement on. My remit does not require any forensic assessment of the various residents' occupation, but instead is limited to whether the LDC claimed should be issued on the balance of probability with regard to the evidence put forward.
31. Although, therefore, I may exercise the powers under S191(4) to issue an LDC for any use or development that is shown to be lawful on the facts and evidence, rather than refuse a certificate on the basis of some error or misunderstanding in the application form, it seems clear from the appellant's evidence that she is seeking an unrestricted and independent residential use. Moreover, any LDC issued would need to relate to and include the use of the land in its wider sense, and the application was not made with this in mind, or to that end.
32. I have had regard to all of the letters and documents submitted in support of the appeal, but the details therein, whilst maybe of relevance, are not so compelling as to alter my conclusions. I therefore find that the evidence produced in its entirety is neither sufficiently precise nor unambiguous for the appellant to have discharged her burden of proof.
33. For the reasons given above I conclude, on the evidence before me, that the use was not lawful on 20 January 2020 within the meaning of section 191(2) of the Town and Country Planning Act 1990.
34. Accordingly, I will exercise my powers under section 195(3) of the Act as amended.

Timothy C King

INSPECTOR