



Appeal Decision

Site visit made on 1 August 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2022

Appeal Ref: APP/L1765/X/22/3294907

Ashbrook Stables, Main Road, Colden Common SO21 1TJ

- 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 Richard Cooper against the decision of Winchester City Council.
 - The application Ref 21/02502/LDC, dated 24 September 2021, was refused by notice dated 7 December 2021.
 - The application was made under section 191(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: Use of a building as a single, separate and independent dwellinghouse (Use Class C3), with associated vehicular access and domestic curtilage in excess of four years.
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Summary of Decision

1. The appeal is dismissed.

Preliminary Matters

2. The parties opted for the appeal to be determined by means of written representations and did not identify injustice that would otherwise arise. I am content to determine the appeal on the written evidence that is already before me, and do not consider that injustice would arise.
3. The appeal application relates solely to use, and therefore certification of operational development is not before me.

Main Issue

4. The main issue is whether the Council's refusal to grant a certificate of lawfulness for the existing use was well founded.

Reasons

5. In matters such as this, the onus is on the appellant to demonstrate his case on the balance of probabilities.
6. The parties agree that planning permission was granted for two mobile homes/caravan pitches in 2007¹, but since May 2016 there has been a building at the site, and this has been residentially occupied as a dwelling.

¹ Ref APP/L1765/A/07/2044267

7. On that basis, the appellant contends he only needs to demonstrate a period of 4 years use of the building for the certification that he seeks; being the use of the building as a dwelling. The Council contends the relevant period is 10 years.
8. The difference between the parties therefore centres upon whether the statutory provisions of s171B(2), which the appellant relies upon, or s171B(3) of the Act, which the Council relies upon, are applicable.
9. The evidence before me is the origins of the building are that of a caravan, but that owing to its size the Council accepts it is now a building. The evidence is then of a building erected unlawfully in/by May 2016 and used as a dwelling from the outset.
10. Section 171B(2) only applies to the change of use of a building to a single dwelling or to a breach of a condition which prevents a change of use of a building to a single dwelling.
11. However, if a building is erected unlawfully and used as a single dwellinghouse from the outset, meaning that no change of use of a building has occurred, s171B(2) is not relevant. The implication is that the time limit for enforcement action against the use is then ten years under s171B(3)² and relates to the land.
12. Whilst the 2007 permission was then for a residential use, that use was a caravan site. A caravan site does not fall within any use class as defined in the Use Classes Order and is therefore a sui generis use. The appellant however now seeks certification for a planning unit falling within use class C3 (dwellinghouse). As a matter of fact and degree, these uses are materially different.
13. Section 171B(2) is therefore not applicable where the building was constructed unlawfully and used as a single dwelling from the outset, meaning there was no change of use of any pre-existing building. That is the case here, even though the building originated as a caravan, but which accordingly is not a building.
14. In light of this, and that the building has only been erected and occupied since May 2016, the appellant is unable to demonstrate on the balance of probabilities a period of 10 years continuous use of the building in accordance with s171B(3) of the Act.
15. The appellant also seeks certification for an associated domestic curtilage and vehicular access. However, a curtilage is not a use of land and therefore cannot be certified. Moreover, as I have found that the use of the building as a dwelling is not lawful, it follows that any associated uses, such as the vehicular access for which certification is also sought, could not be lawful as part of the use of that planning unit either.
16. As a matter of fact and degree, based upon the evidence before me, the appellant has therefore not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities.

² Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

Formal Decision

18. The appeal is dismissed.

Paul T Hocking

INSPECTOR