



Appeal Decision

Site visit made on 27 September 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2022

Appeal Ref: APP/W1850/X/22/3295616

Redwood Orchard, St. Michaels, Tenbury Wells, Worcestershire WR15 8TL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) by the Planning and Compensation Act 1991 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 Ms Brigid Eakins against Herefordshire Council.
 - The application Ref.214586 is dated 16 December 2021.
 - 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 the siting of a caravan for use ancillary to the lawful agricultural use of the Land.
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Decision

1. 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.

Application for costs

2. An application for costs was made by Ms Brigid Eakins against Herefordshire Council. This application is the subject of a separate decision.

Preliminary Matters

3. An enforcement notice has been issued in respect of the site, reference EN2017/002547/ZZ, dated 11 April 2017, which alleged the 'erection of dwelling, known as 'the log cabin', without the benefit of planning permission; and Change of use of land from agricultural to mixed use of residential and agricultural, without planning permission.' The requirements of the notice, as summarised, are to remove the log cabin and cease the use of the land for residential purposes. The enforcement notice was appealed, reference APP/W1850/C/17/3175427 and was allowed on ground (g), extending the period for compliance to 1 year.
4. The log cabin was on site at the time of my site visit. The appellant has drawn my attention application 221466 for the use of the existing log cabin on site for use ancillary to the lawful agricultural use of the land. I note that the Council exercised its powers under section 70A of the Act and declined to determine the application on 30 August 2022. However, this determination relates to the log cabin and is therefore not relevant to my consideration of this appeal.

Main Issue

5. The main issue of the appeal is whether the Council's deemed refusal to grant a LDC was well-founded.

Reasons

6. An application under S192(1)(a) of the Act¹ seeks to establish whether any proposed use of buildings or other land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.
7. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
8. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii)
They do not constitute a contravention of any enforcement notice then in force.
9. The appellant has previously secured an LDC for the site, reference 213552 approved on 17 November 2021, for the siting of a caravan ancillary to agricultural use of land. The Council advise that, other than reference to plans and brochure photos, the application which is the subject of this appeal appears the same as that approved under reference 213552. It is not disputed that the land within which the caravan would be sited is agricultural land and from my inspection of the site, I have no reason to conclude that the land is not in agricultural use.
10. I note the application form refers to the proposed use as being *sui generis*, which is a Latin term, meaning 'of its own kind'. I consider, from the evidence submitted, which includes plans and photographs, there is ambiguity as to exactly what the appellant wishes to ascertain the lawfulness of and wrote to the appellant and seeking clarity in this regard. Specifically, I queried whether the appellant seeking a determination that:
 - 'The siting of the caravan, as shown on 'Setting out plan, Section and Elevations' Rev D for use ancillary to the agricultural use of the land' would be lawful?' Which I referred to as 'Description A'; or
 - "The siting of the caravan, as shown on 'Setting out plan, Section and Elevations' Rev D and the photographs entitled 'Before: Timber Frame Assembly' and 'After: Finished Twin-Unit Mobile Home' for use ancillary to the agricultural use of the land" would be lawful?' Which I referred to as 'Description B';
 - 'The siting of a caravan for use ancillary to the agricultural use of the land' would be lawful?' Which I referred to as 'Description C'.
11. The appellant confirmed that they are seeking a determination that the siting of a caravan for use ancillary to the agricultural use of the land would be lawful, Description C. The appellant confirms that the details of a caravan that were

¹ Town and Country Planning Act 1990 (as amended)

submitted alongside the application do not form part of the application to be determined, which relies on the legal definition of a caravan.

12. Section 55(1) of the Town and Country Planning Act 1990 (as amended) states that "development" means the carrying out of building engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(e) of the Act sets out that the use of any land for the purposes of agriculture shall not be taken for the purposes of the Act to involve development of the land.
13. The term 'caravan' is defined in section 29(1) in the Caravan Sites and Control of Development Act 1960 (CSCDA60) as meaning 'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include—(a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent'. In law, a caravan is only a caravan if it meets the description laid down in section 29 of the CSCDA 1960 and Caravan Sites Act 1968 (CSA68) as amended.
14. The appellant has drawn my attention to various case law² which relates to the definition of a caravan, including *Byrne v SSE & Arun DC* [1998] JPL 122, which the appellant asserts show that a caravan can be erected 'from scratch' on site provided it is constructed of no more than two sections which are then bolted together. However, it is not open to the appellant to pose a general enquiry as to what is or might be lawful. The appellant is relying on the legal definition of a caravan and is not seeking a determination as to whether something specific would be a caravan for the purposes of the above Acts.
15. The siting of a caravan is generally held to constitute a use of the land and not operational development. I accept the principle that it is not necessary to include floor plans and elevations for a caravan where it is the use of land which is being sought³. A caravan, which is a caravan in law, and which is used for the purposes of agriculture, would not be development for the purposes of the Act, since there would be no operational development and no material change of use.
16. In the event the appellant brought a caravan to the site which does not meet the definition of a caravan in law, or which is not used for the purposes of agriculture, it would not benefit from the LDC.
17. Thus, for the reasons given above, I find that the siting of a caravan for use ancillary to the agricultural use of the Land would have been lawful at the time of the application.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the siting of a caravan for use ancillary to the agricultural use of the Land was not well-founded and that the appeal should succeed. I will

² As set out in the document 'Definition of a caravan' submitted by the appellant. Appeal decision APP/N1025/C/01/1074589 is also referenced.

³ As set out in various appeal decisions APP/A6835/A/21/3273043, APP/R3650/X/21/3267733 and linked cases and APP/R3650/X/16/3161457

exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M Savage

INSPECTOR



Lawful Development Certificate

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

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

IT IS HEREBY CERTIFIED that on 16 December 2021 the use 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed siting of a caravan which accords with the legal definition of a caravan and its use ancillary to agriculture would not constitute development requiring planning permission.

Signed

M Savage

INSPECTOR

Date: 25 October 2022
Reference: APP/W1850/X/22/3295616

First Schedule

The siting of a caravan for use ancillary to the agricultural use of the Land

Second Schedule

Land at Redwood Orchard, St.Michaels, Tenbury Wells, Worcestershire WR15 8TL

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 /operations 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, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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: 25 October 2022

by M Savage BSc (Hons) MCD MRTPI

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Reference: APP/W1850/X/22/3295616

Scale: Not to scale

