



Appeal Decision

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21ST NOVEMBER 2022

Appeal Ref: APP/D0840/X/22/3298441

Polpeor Farm, Wheal Kitty Road, Lelant Downs TR27 6NR

- 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 Neil Hallett against the decision of Cornwall Council.
 - The application ref PA21/11924, dated 1 December 2021, was refused by notice dated 5 April 2022.
 - 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 described on the application form as: *"Use of existing static caravan/mobile home as ancillary accommodation/storage and extension to residential curtilage"*.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
3. The description in the heading, taken from the application form, includes reference to the matter for which an LDC is sought as *"use... as extension to residential curtilage"*. However, a 'curtilage' defines an area of land in relation to a building and is not a use. Land does not have to be within the curtilage of a dwelling to be in use for residential purposes in association with that dwelling. For planning purposes, a curtilage is primarily of relevance to 'permitted development' rights¹ and in relation to s55(2)(d) of the Act. Consequently, I interpret the application as seeking an LDC in respect of the use of part of the appeal site for residential purposes in association with the use of the dwelling and have determined the appeal on that basis.

Main Issue

4. The main issue in this appeal is whether the Council's refusal to grant an LDC in respect of the use of part of the site for residential purposes in association with the use of the dwelling was well-founded. This turns on whether the appellant has been able to show that, on the balance of probability, such use was lawful at the date of the application.

Reasons

5. The site contains a detached dwelling and land in the same ownership. On part of the site, to the north of the dwelling beyond the vehicular access track and a Cornish hedge, there is an area of land where a static caravan has been stationed. There is a vehicle parking area in front of the caravan. I am given

¹ In the Town and Country Planning (General Permitted Development)(England) order 2015 (as amended).

to understand that the caravan contains a living area, kitchen, bedroom and bathroom. Also, I understand that the caravan has its own water and electricity supply, with a connection to the foul drainage system serving the dwelling.

6. An LDC is sought on the basis that at the application date, it was too late to take enforcement action in respect of the material change of use of the part of the site which includes where the caravan is stationed, to a use for residential purposes in association with the use of the dwelling. At s171B(3), the Act provides that where there has been a breach of planning control consisting of a material change of use (other than to use as a single dwelling), no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The effect of the Act at s191(2)(a) is that a material change of use would be lawful if no enforcement action can be taken because the time for taking such action has expired.
7. The onus is on the appellant to show that the matter for which an LDC is sought is immune from enforcement action and consequently, lawful. This is qualified by the Planning Practice Guidance chapter 'Lawful Development Certificates', which advises that where a Council has no evidence itself, nor any from others, to contradict or otherwise make an applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous in order to justify the grant of a certificate on the balance of probability².
8. According to the appellant's Statutory Declaration, they have owned and resided at the dwelling since August 2020. They can only therefore provide direct, first-hand evidence of the events at the site since that date. The appellant describes the caravan as having been used for 'ancillary storage' whilst they have resided at the dwelling. This suggests that, since the above date at least, the part of the site including the caravan could have been used for purposes incidental or ancillary to the use of the dwelling. The tests for ascertaining the correct planning unit are set out in established case law³. The use described by the appellant indicates a significant functional relationship between the use of the part of the site including the caravan and the use of the dwelling. The foregoing points towards the whole site forming one residential planning unit for some of the ten-year period.
9. Direct first-hand evidence of events at the site during the part of the ten-year period prior to the appellant residing at the dwelling is provided by neighbours living opposite. They recalled that the caravan was stationed on this part of the site in or around August 2009, what they described as a 'curtilage' surrounding the caravan also having been formed at some point previously during that year. In addition, the neighbours recalled the caravan being stationed at the site for the purpose of being occupied by a close relative of the persons then residing at the dwelling. Correspondence from an electricity distribution company regarding the establishing of a new mains electricity connection for a 'mobile home' is supportive of the neighbours' recollection concerning the date of the caravan's arrival. Aerial photographs, which indicate that, sometime between 2005 and 2013, this part of the site was enclosed from adjacent agricultural land and the caravan stationed on it, also support the neighbours' account in this respect.
10. Nevertheless, the above evidence simply goes to show that a caravan had been stationed at the site for more than ten years prior to the application date. It does not give any great detail as to how this part of the site was being used before the appellant resided at the dwelling. The caravan contains the facilities

² Paragraph: 006 Reference ID: 17c-006-20140306.

³ *Burdle and Williams v SSE and New Forest DC* [1972] WLR 1207.

required for day-to-day private existence and is provided with separate utilities. The area of land around the caravan is largely physically separate from the rest of the site. These factors do not reflect a use 'ancillary' to that of the dwelling. In my opinion, they point more towards this part of the site as being in its own residential planning unit, separate from that of the dwelling. Therefore, it is entirely possible that whilst the caravan was in use for residential accommodation this part of the site could largely have been separate, both in physical and functional terms, from the rest of the site.

11. That the caravan was occupied, initially at least, by a close relative of the persons then residing at the dwelling does not necessarily mean it was in use for purposes ancillary to that dwelling. The available evidence does not clearly show the extent to which, if indeed at all, occupiers of the caravan shared their living activity in company with the persons occupying the dwelling. It is entirely possible that the caravan occupiers led largely separate lives from the occupiers of the dwelling, apart from the sort of occasional interactions that might normally be associated with neighbours. There were also no details concerning any use made of the caravan at times when it was not being occupied as residential accommodation. Consequently, the available evidence does not show that the caravan had been used other than as a separate unit of residential accommodation prior to the appellant residing at the dwelling.
12. Compared to the use of the part of the site including the caravan as separate residential accommodation, the use for residential purposes in association with the dwelling is materially different in character and is in a different planning unit. As a result, and as a matter of fact and degree, it is likely that the use which has occurred on this part of the site since the appellant has resided at the dwelling has amounted to a material change of use. As this has occurred less than eighteen months prior to the application date, the use for which an LDC is sought has not been continuous for the required ten-year period and it follows was not lawful on the application date.
13. Accordingly, the appellant's evidence is not sufficiently precise and unambiguous to show that, on the balance of probability, a material change of use of the part of the site including the caravan to a use for residential purposes in association with the use of the dwelling commenced more than ten years prior to the date of the application and was continuous throughout that period so as to be immune from enforcement action.

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 "*use of existing static caravan/mobile home as ancillary accommodation/storage and extension to residential curtilage*" 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.

Stephen Hawkins

INSPECTOR