



Appeal Decision

by D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 7th December 2022

Appeal Ref: APP/N2739/X/22/3298483

Caravan at Dunelm Farm, King Rudding Lane, Riccall, Selby, YO19 6QL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Julie Gaskell-Horner against the decision of Selby District Council.
 - The application ref 2021/0926/CPE, dated 28 July 2021, was refused by notice dated 21 December 2021.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a certificate of lawful use or development is sought is the siting of a twin unit caravan for use as a dwelling and use of adjoining land for purposes incidental to the use and enjoyment of the dwelling (e.g. parking, turning, yard area, bin storage).
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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 existing use which is found to be lawful.

Preliminary Matters and Background

2. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection. Both parties were given the chance to comment on whether a site inspection was required.
3. The burden of proof is with the appellant and the appropriate test of the evidence is the balance of probabilities. The appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
4. The description of development for which an LDC is sought is taken from section 5 of the application form and refers to the siting of a twin unit caravan for use as a dwelling and the use of adjoining land for purposes incidental to the use of that dwelling. It is clear from the evidence before me that the appellant is seeking to establish that a portacabin and static caravan were stationed on the site for a residential use and the adjoining land was used for purposes incidental to that residential use. The portacabin and static caravan were removed from the site and a twin unit caravan was then stationed, for

residential use, within the appeal site but in a different location to the former. The appellant contends that the stationing of the twin unit caravan did not amount to a material change of use of the appeal site. There is no dispute that the stationing of the portacabin, static caravan and the twin unit caravan are to be treated as a use of the land. I have dealt with the appeal on this basis.

5. The appellant, her husband, and her uncles, Mr G Firth and Mr R Firth, all lived at the original Dunelm Farm, on Main Street, Riccall. That original farm was sold to the Council and the agreement for this, and a subsequent licence, allowed residential occupation to continue there until 28 April 2000. In 2021 an appeal¹ (the 2021 appeal) was allowed and an LDC granted for the construction and extension of the dwelling, as shown in the photograph and floor plan attached to that certificate and the residential occupation of those parts of the dwelling excluding the area annotated "dining room" and the larger of the 2 areas annotated "Living" on the floor plan attached to that certificate. The appeal site for the 2021 appeal was different to that before me as it included the dwelling cited above and a 'garden' area as well as the site of the twin unit caravan that is the subject of this LDC. The area included within the site for this appeal relates to a rectangular piece of land between the original access drive and the rear of a portacabin and static caravan that were stationed on the site and later removed.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

7. I will consider whether the development is immune from enforcement action and thereby lawful by virtue of section 191(2) of the 1990 Act. Section 191(2) of the 1990 Act states that '*For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then 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 (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*' There is no evidence before me to indicate that there is an enforcement notice in force on the appeal site or the overall site.
8. There is no dispute that the 10-year time limit cited in section 171(B)(3) of the 1990 Act applies in this case. The date of the LDC application is the 5 August 2021 therefore the appellant needs to show, on the balance of probability, that the use of land, including the stationing of a caravan for residential use, was instituted on or before 5 August 2011 (the relevant date) and continued for 10 years thereafter without significant interruption.
9. The appellant considers that the red line indicating the appeal site does not represent the planning unit. This is because she considers that the whole of the farm and the appeal site represents the planning unit that is in a mixed use of agriculture and residential. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to

¹ Appeal Ref: APP/N2739/X/19/3235398

assess the materiality of a change of use. Whenever it is possible to identify a single main purpose of an occupier's use of land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.

10. Nevertheless, it may be appropriate to consider the entire unit of occupation in the case of a composite or mixed use where an occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another and where those uses are not confined within distinct and separate parts of the site. Thirdly, it may frequently occur that on a single unit of occupation two or more physically separate and distinct areas of land are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose, together with its incidental and ancillary activities ought to be considered as a separate planning unit.
11. I acknowledge that the original Dunelm Farm was moved from its original location on Main Street Riccall to King Rudding Lane and that planning permission was granted in 1999 for an agricultural worker's dwelling to serve the new farm. The appellant and her uncles owned the whole farm together with the appeal site, the site of the appellant's dwelling and the site of the agricultural worker's dwelling. There do not appear to be physical boundary treatments separating the different areas of the land owned by the appellant. However, the appeal site is part of a hardsurfaced area that was a runway on an airfield therefore it is physically distinct from the agricultural land. Moreover, other than the fact that the uncles worked on the farm I have little evidence before me to indicate the nature of the functional links between the appeal site and the agricultural activities on the farm. There is also no evidence as to when the uncles ceased to work on the farm given that they passed away in 2017 and 2020. As such, it has not been demonstrated that the appeal site and the surrounding farmland forms a single planning unit.
12. The appellant's statutory declaration (the declaration) states that the uncles moved into the portacabin and static caravan on the appeal site in 2000. I have no reason to disagree with the findings of the previous Inspector who stated that there is nothing to suggest that; the accommodation did not afford the facilities required for day-to-day private domestic existence; the submitted Council Tax records relate to accommodation other than that occupied by the appellant's uncles.
13. The previous Inspector questioned the date of an aerial photograph from 2002 as it was dated 31 December and it showed deciduous trees in full leaf. Nonetheless, the appellant has now submitted evidence from the supplier of the photograph which indicates that the date of it is 14 July 2002. Consequently, together with the remainder of the aerial photographs from 2007, 2010, 2012 and 2013 the photographic evidence indicates that the portacabin and static caravan were stationed on the appeal site for over 10 years. Taken with the Council Tax records it is clear that the portacabin and static caravan were in residential use and occupied by the appellant's uncles for more than 10 years.
14. However, the declaration states that in 2013/14 the static caravan and portacabin became unfit for purpose and that the twin unit was purchased to replace them. The twin unit caravan is visible on the 2013 aerial photograph. It is stationed an appreciable distance from where the static caravan and portacabin were stationed. The declaration states that the space in between

the caravans allowed the appellant's uncles to move across their belongings in their own time and left space to enable the static caravan and portacabin to be removed.

15. The Council considers that by removing the static caravan and portacabin and stationing the twin unit caravan not in the same place that the residential use established by the stationing of the former has been abandoned by their removal. Moreover, it considers that the siting of the twin unit caravan resulted in a material change of use of land as it does not consider that it has been demonstrated that the remainder of the land within the appeal site fell within the planning unit associated with the residential use of the static caravan and portacabin.
16. The declaration states that the entrance to the static caravan and portacabin was at the eastern end of the unit, facing the access and farm buildings. It also states that there was a small shed at the front and two polytunnels, which her uncles used to grow their own vegetables in. The shed and a polytunnel are shown on the aerial photograph, submitted by the appellant dated 2002. A second polytunnel appears on the aerial photographs from 2007, 2010 and 2013. By 2013 the first polytunnel does not appear to be used as only its frame is visible on the aerial photograph. By 2017 both polytunnels appear to be in a state of disrepair on the aerial photograph. The shed visible on the 2002 aerial photograph appears to remain on the site until at least 2013 according to the aerial photographs.
17. The shed and polytunnels appear to have been relatively small in scale and size. Therefore, it is reasonable to consider that they were used in connection with a hobby of growing vegetables. The Council have not provided any evidence to contradict that these structures were used by the appellant's uncles to grow their own vegetables. To access those structures the uncles would have crossed the hardstanding that was between the eastern end of the portacabin/static caravan and the structures. Moreover, the declaration states that the hardstanding was used for parking and turning of the appellant's and visitors' vehicles, and it was also used for the storage of bins and other general domestic items. The evidence before me also indicates that the uncles only drove tractors to drive around the farm and into the village.
18. I acknowledge that the aerial photographs between 2002 and 2013 show little evidence of parked vehicles or storage of items on the hardstanding. However, by their nature vehicles are transitory and the photographs only provide a snapshot in time. It is also not clear whether a green article located in front of the polytunnels on the 2007 and 2012 aerial photographs is a vehicle, such as a tractor, or stored items. That green item is not visible on the 2010 aerial photograph, submitted by the appellant, but a different colour vehicle does appear to be parked adjacent to the polytunnels in that photograph. Other items appear to be located adjacent to the green item on the 2007 aerial photograph. In addition, given the size of most domestic refuse bins I consider they would be difficult to discern on an aerial photograph especially given the quality of those photographs dated between 2002 and 2013.
19. Additionally, it seems to me to be reasonable to consider that given the position of the main entrance within the portacabin/static caravan and the location of the original and current access drive that any vehicles associated with the occupiers of or visitors to that dwelling would park on the

hardstanding to the east of it. It is also logical that any refuse bins would be stored within that area to enable ease of access for refuse collection. Given that the shed and at least one of the polytunnels appeared to be maintained between 2002 and 2013 it is more likely than not that they were in use on a regular and continuous basis over that period. Also, there is no evidence before me to indicate that the hardstanding was in a use associated with the agricultural activities of the farm at any time during that period.

20. I note that the previous Inspector found that *'evidence of associated land being consistently used in connection with the residential occupation of the appellant's uncles' accommodation is either absent or not sufficiently precise. Therefore, the relevant planning unit comprises only the living accommodation.'* However, based on the evidence submitted with this appeal, there is little that makes the appellant's version of events, as stated in her written evidence, less than probable. That written evidence on the use of the hardstanding is precise and unambiguous. When viewed in totality, the evidence now presented indicates that on the balance of probabilities that the hardstanding was used for incidental purposes whilst the portacabin/static caravan was stationed on the appeal site. Consequently, it formed part of the planning unit associated with the residential use of the portacabin/static caravan.
21. I consider that as a matter of fact and degree that the portacabin/static caravan, in combination with the part of the hardstanding that forms part of the appeal site was utilised for residential and associated incidental uses and is an area where physically and functionally interdependent activities took place even though the appellant owns a wider area of land and there are no physical boundary treatments delineating the appeal site. As such, the residential use of the portacabin/static caravan was a primary use in its own planning unit. The material change of use associated with the residential use took place before 5 August 2011 and that use then continued for 10 years after the date of the change without significant interruption.
22. The twin unit caravan was stationed on the appeal site, adjacent to the polytunnels in 2013. The appellant's uncles moved from the portacabin/static caravan into it at some point in 2014 and then the portacabin/static caravan was removed. Even though the twin unit caravan is not in the same position as the previous caravan it is within the residential planning unit associated with the previous caravan. There has been no material change in the character of that planning unit as one caravan is stationed within it and it was used until recently as a dwelling.
23. It was held in *Panton and Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461 that lawful use rights could only be lost by: evidence of abandonment; the formation of a new planning unit; or by being superseded by a further change of use. A use which was merely dormant or inactive could still be considered as 'existing', so long as it had already become lawful and not been extinguished in one of those three ways.
24. In this case it appears that both the portacabin/static caravan and the twin unit caravan were on the appeal site for a short period of time in 2013/14. I have found that the hardstanding where the twin unit caravan is stationed formed part of the planning unit associated with the residential use of the portacabin/static caravan. Therefore, in my judgement the residential use was

not abandoned. There is little evidence that there have been any intervening uses of the hardstanding around the twin unit caravan or that a new planning unit was created once the twin unit caravan was stationed on the site. The physical condition of the appeal site since the stationing of the twin unit caravan seems very similar in character and appearance to that shown within the photographic evidence for the period 2002 through to 2013. It is clear that the intention of the appellant's uncles was to live on the appeal site until they passed away. Furthermore, whilst the twin unit caravan does not appear to have been in use as a dwelling since the death of the appellant's uncle in 2020 there is no evidence to indicate it has been put to any other use. Based on the evidence before me, I am satisfied that the residential use of the appeal site has not been abandoned.

Conclusion

25. Consequently, I find that a change of use of the appeal site to residential use took place before 5 August 2011 and that use then continued for 10 years after the date of the change without significant interruption. The portacabin/static caravan and the part of the hardstanding that forms the appeal site formed the planning unit associated with that residential use and for purposes incidental to that use. The replacement of the portacabin/static caravan with the twin unit caravan within the same planning unit for a residential use has not resulted in a material change of use of that planning unit.
26. 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 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.

D Boffin

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 28 July 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use was initiated more than 10 years before the date the application was validly made and continued for 10 years thereafter without significant interruption.

Signed

D Boffin

Inspector

Date: 7th December 2022

Reference: APP/N2739/X/22/3298483

First Schedule

The siting of a twin unit caravan for use as a dwelling and use of adjoining land for purposes incidental to the use and enjoyment of the dwelling (e.g. parking, turning, yard area, bin storage).

Second Schedule

Caravan at Dunelm Farm, King Rudding Lane, Riccall, Selby, YO19 6QL

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

