



Appeal Decision

Site visit made on 18 April 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2023

Appeal Ref: APP/V2635/X/22/3291180

Horseshoe Farm, Roman Road, South Creake, Norfolk NR21 9JA

- 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 the decision of Kings Lynn and West Norfolk Borough Council not to issue a certificate of lawful use or development ("LDC").
 - The appeal is made by Casey Acton against Kings Lynn and West Norfolk Borough Council.
 - The application Ref 21/01168/LDE is dated 10 June 2021
 - 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 sought is described as *'the erection of a dwellinghouse.'*
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Decision

1. The appeal is dismissed.

Background

2. The appellant has provided a statutory declaration which confirms that a twin unit caravan or mobile home was delivered to the site on 4 December 2014. Upon delivery the mobile home was bolted to an existing steel and timber-framed porch extension and any space between the frame and the wall of the mobile home was foam filled.
3. The Council accepts that the size of the resulting structure falls outside the definition of a caravan as set out in s29(1) of the Caravan Sites and Control of Development Act 1960 or the definition of a twin unit caravan in the Caravan Sites Act 1968. It also acknowledges the structure's permanence as it remains on site under its own weight, and that it is physically attached to the land via the bolt support structure underneath the caravan along with the bolted-on porch which is attached to a concrete base.
4. On the basis of the above the standard criteria regarding the recognised three tests (construction, mobility and size) has been applied, and it is agreed between the main parties that the caravan as brought to the site on to the land has been added to, altered and affixed to the ground to the extent that it can no longer be considered as a caravan. I must therefore conclude that it is now a building and falls within the ambit of operational development.
5. The appellant indicates that she has lived in what she terms the "dwellinghouse", continuously since 4 December 2014. This is not disputed by the Council. From my site visit inspection I agree that the building appears as

a fully self-contained residential unit, and is consistent with the judgement in *Gravesham BC v SSE* [1984] 47 P & CR 142 which sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence. Regard should also be had to the actual use to which the building involved has been put and, in this particular instance, I am satisfied that the building can be correctly described as a dwellinghouse and is occupied as such.

6. It should be noted that an enforcement notice was issued against the land in March 2021, thereby just preceding the submission of the LDC application. This identified a breach of planning control at the site involving the unauthorised material change of use from a commercial yard to the siting of residential caravans including infrastructure. I understand that this enforcement notice has since taken effect and therefore, if the mobile home, as brought onto the land, remained as such, rather than now constituting operational development, it would be caught by the notice's requirements.

Main Issue

7. 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.
8. S191(2) says that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
9. In an appeal under s195, against the refusal of a LDC, the burden of proof is upon the appellant. The two main parties disagree as to whether immunity from enforcement action (hence lawfulness) is covered by the four or ten year period. Leaving aside for the moment the legal points as to which time period should apply here the test of the evidence would need to show that the building, or rather the newly erected dwelling, had been used on a continuous and uninterrupted basis since at least 10 June 2017 for the four year bar, or at least 10 June 2011 should the ten year period apply.
10. The onus of proof is on the appellant to demonstrate, on the balance of probability, that the property has been used in such a manner, thereby confirming that the planning position is as claimed. Accordingly, the key is that the evidence should be precise and unambiguous to this end.
11. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on the evidential facts and on relevant planning law.

Reasons

12. Section 171B(2) of the 1990 Act says that the period of immunity means that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. However, it must be noted that s171B(2) applies only to a change of use of an existing building for use as a dwelling. Importantly, it does not apply to the use of a building that was newly erected as a dwelling from the outset, and that reflects the case here where a

building was created upon the swift modification and extension of the mobile home brought onto the land in December 2014. As no planning permission was ever issued, let alone sought, for the operational development involved, this itself represented a breach of planning control.

13. The above point was made in the judgement of *R (Mid Suffolk DC) v FSS* [2005] EWHC 2634 (Admin) and was further confirmed by the judgement of the Supreme Court in the case of *Welwyn Hatfield v SSCLG* [2011] UKSC 15. It was suggested in the latter that whilst the unauthorised erection of the building would become immune from planning enforcement action under the four year rule, the use itself amounted to a breach under s171B(3) which refers to "any other breach of planning control" and would therefore be subject to the ten year bar.
14. No material change of use has thereby taken place in this case. Instead, the development has only involved the modification of a building brought onto the land, and its adaptation for residential occupation; effectively the construction and creation of a dwellinghouse. The implication of *Welwyn Hatfield* is that s171B(3) applies in cases where a building is unlawfully used as a dwellinghouse from the outset.
15. The main thrust of the appellant's case is that the caravan ceased to exist upon the creation of a building, subsequently used as dwellinghouse. This is all accepted and the only matter in dispute is the rightful time period for immunity to be applied. However, little analysis has been paid to the case law most relevant to this appeal. I have had regard to the various judgements and appeal decisions provided by the appellant but the principles involved in these do not directly parallel or materially conflict with the definitive judgements that I have highlighted given the factors involved.
16. The LDC applied for was worded as "the erection of a dwellinghouse", which implies the building's use as a dwellinghouse. S191(4) allows me to modify the description of the existing use, operation or any other matter for which lawfulness is proposed. However, the description should be modified with care and the power given under s191(4) is only discretionary. In this instance, whilst the building can be considered as immune from planning control, its use as a dwellinghouse for residential purposes is not.
17. Accordingly, the use here is subject to the ten year bar, and to be lawful needs to have continued uninterrupted since at least 10 June 2011. Instead, the appellant confirms that the use commenced on 4 December 2014. This thereby falls short of the requisite period.
18. Given the circumstances it would be absurd of me to alter the description to instead read as the erection of a building as that is clearly not the purpose of the application made nor the LDC sought, as confirmed by the nature and content of the various representations. As such, I do not intend to modify the description in this instance.
19. Having interpreted and weighed up all the evidence available I consider that, from the situation, the appellant has not, given the facts involved in this case, discharged the burden of proof. Accordingly, for the reasons I have set out above, I conclude, on the evidence available, that the use was not lawful on

20. 10 June 2021 within the meaning of section 191(2) of the Town and Country Planning Act 1990.

21. The appeal is therefore dismissed and I will exercise my powers under section 195(3) of the Act.

Timothy C King

INSPECTOR