



## Appeal Decision

Site visit made on 10 October 2023

**by R Hitchcock BSc(Hons) DipCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date 19 October 2023**

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**Appeal Ref: APP/R2520/X/22/3308561**

**The Piggery, Cow Lane, Swinderby, Lincoln LN6 9ZT**

- 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 (LDC).
  - The appeal is made by Mr Tom Tunstall against the decision of North Kesteven District Council.
  - The application ref 22/0009/LDEXI, dated 3 January 2022, was refused by notice dated 9 May 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 is sought is use of the land as domestic garden.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether or not the Authority's decision to refuse the LDC was well founded.

### Reasons

3. The appeal is made to ascertain whether the claimed garden use of the land is lawful as described in s191(2) of the Act. It provides that '...uses and operations are lawful at any time if - (a) no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force'.
4. The relevant 'time' for the purposes of s191(2) is the date or 'time of the [LDC] application' as set out under s191(5).
5. The burden of proof in satisfying the requirement of s191(1)(a) falls to the appellant to establish that the use of the land as a garden commenced at least 10 years before the date of the application and continued without any significant interruption thereafter. The appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not.
6. The land referred to in the application form is that shown edged black on a plan accompanying a Planning Contravention Notice (PCN) served by the Council on 29 November 2021. The land lies a short distance to the northwest of a residential bungalow known as The Piggery. It is bordered by panel fencing and

gates to enclose a mainly stoned surfaced area containing a static caravan. In addition, there is a small lawn and domestic structures within the fenced space. The site has a separate gated access from Cow Lane.

7. There is no dispute between the main parties that the land was more likely than not used as part of a garden in association with the residential occupation of The Piggery since about 1994. However, it is the Council's contention that the introduction of a caravan on the site for residential habitation since 2019 has resulted in the creation of a separate planning unit such that the clock for the purposes of the time limits set out in s171B.(3) of the Act re-started at that time.
8. In the event that, prior to the installation of the caravan, the Council was content that the land formed part of the garden area, it is possible that its occupation for residential purposes could be deemed permitted development under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This is subject to the demonstration that its use within the curtilage was on an incidental basis to the occupation of The Piggery.
9. However, in response to the PCN, the appellant confirmed that it was occupied by Mr James Tunstall (second son of the appellant) and his daughter-in-law as their sole form of residential accommodation. It was stated that this arrangement allowed for some care to be provided by the occupiers to him and his wife, who reside in the bungalow.
10. The appellant has provided limited information in relation to the nature or regularity of any care assistance provided by the occupiers of the caravan. Furthermore, notwithstanding that the land may be in single ownership, there is little to demonstrate that the occupancy of the caravan was in any way dependent on the residential occupancy of the bungalow, or that any other functional link exists between them.
11. The response to the PCN also stated that the static caravan benefits from water and electricity supplies shared with the bungalow; however foul water and waste collections are separate. A claim that other amenities are also shared is unqualified such that, aside from a pedestrian gate linking the areas divided by the fence, it is unclear as to what they amount to.
12. The scale of the caravan, its position distant from The Piggery and its installation along with separate access, septic tank, fenced amenity space, parking areas and outbuildings cause it to appear independent and set within its own enclosed curtilage. It appears physically separate and, on the appellant's evidence, functionally separate from the bungalow.
13. In this, I note that the appellant sought to regularise the 'static prefabricated home' on the land under retrospective planning application Ref. 21/0864/FUL. However, in finding that the caravan provides for an independent unit of residential occupation, the Council refused planning permission pursuant to its policies for the spatial distribution of development. On the evidence before me, this position was not challenged by the appellant.
14. Given the consequential change in character of the use and appearance of the land, it is not possible to conclude with any confidence that the occupation of

the caravan was incidental to the occupation of the dwellinghouse at the relevant time.

15. In the absence of a demonstrated incidental link, any accrued former use of the land has been supplanted and a new chapter in the site's planning history commenced. As that change of use appears to have taken place in the last 10 years, the claim in respect of the garden area is undone. It cannot therefore be that the claimed use has persisted for the necessary period prior to the date of the application.

### **Other Matters**

16. I note the appellants frustrations associated with the various discussions and communications with the Council in the run-up to the issuing of its decision. However, those are not matters for this appeal.

### **Conclusion**

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use in respect of the land 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.

*R Hitchcock*

INSPECTOR