



Appeal Decision

Site visit made on 31 October 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Appeal Ref: APP/D0840/X/22/3294726

Concrete Batching Plant, Road From Bownder an Sycamor To Creegbrowse, Creegbrowse, St Day TR16 5QF

- 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 Alan Mitchell against the decision of Cornwall Council.
- The application ref PA21/06335, dated 29 April 2021, was refused by a decision notice dated 15 October 2021.
- 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 lawfulness is sought is for the existing use of land for the mixed use of a concrete batching plant and for the siting of a residential caravan.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Application Form refers to the appellant's name as simply 'Mitchell'. However, it is confirmed via the Appeal Form that the appellant is in fact 'Mr Alan Mitchell'. Accordingly, I have reflected this in my banner heading above.
3. The land edged in red on the site location plan, referenced 21069-PL-00-01 Rev A, includes a roughly rectangular shaped parcel of land between the residential property known as Tresten, Church Hill and an unnamed rural road to the north. An agricultural field adjoins the land to the east. The Lawful Development Certificate (LDC) is seeking consent for the mixed use of the land for a concrete batching plant and for the siting of a residential caravan.
4. In cases such as this the onus is on the appellant to demonstrate, on the balance of probabilities, that the mixed use of the land described has continued without significant interruption for a period of 10 years prior to the submission of the LDC application. Any 10-year period before the material date is relevant. Matters such as planning policies and the effect of the development on matters such as neighbour's living conditions or the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
5. To address matters raised by the Council in their Appeal Statement, in his final comments the appellant included an approved site location plan and a sketch plan from the appellant's 1982 permission to erect a dwelling adjacent to the site subject of the appeal¹. From the information before me, these plan extracts were not submitted with the application or initially with the appeal. I have

¹ Council reference C1/3048200994POH

considered the plans under the principles established by the Courts in *Wheatcroft*².

6. The extract plan was not presented to the Council during the application; however, the additional information is extracted from a plan submitted to the Council in 1982 to reiterate a main point that has already been made. As such, the plan was available to the Council as part of their own records, and it would not be necessary to reconsult them on this information. I am, therefore, satisfied that no party, including the Council who have access to this information, would be prejudiced by my assessing the scheme with regard to it.
7. The planning history of the site is extensive and includes historical permissions that are referred to and would be material to the determination of the LDC. In particular, the use of the land for manufacture of ready mix concrete in 1986³; an LDC approved in 2016 for the existing use of land for the stationing of a caravan for independent residential use⁴; a withdrawn planning application for the removal of the caravan and the erection of a bungalow in 2018⁵ and retrospective applications for a workshop⁶ and a polytunnel⁷ in 2021. There are other permissions outlined in the planning history, but for the purposes of this appeal, the ones referred to here are the most pertinent.

Main Issue

8. The effect of s191(2) of the Town and Country Planning Act 1990 (the Act) is that such a use would be lawful if no enforcement action can be taken because the time for taking such action has expired. The relevant date is the date of the application, which in this case is 29 August 2021. The relevant 10-year date would be 29 April 2011, but any 10 -year period before the material date is relevant provided the use has not been abandoned or lost by a supervening event. The relevant test is the balance of probability, not the more onerous test of beyond reasonable doubt.
9. The Planning Practice Guidance (PPG) advises that where the Council has no evidence itself, nor any from others, to contradict or otherwise make the 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 to justify the grant of a certificate on the balance of probability.
10. The main issue is therefore whether the Council's refusal to issue a certificate of lawfulness in respect of the mixed use of the land for a concrete batching plant and for the siting of a residential caravan was well-founded. The LDC turns on whether the available evidence demonstrates that the land subject of the LDC is a single planning unit with a mixed use as a concrete batching plant and the siting of a caravan for residential use.

² Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

³ Council reference C1/8600285H

⁴ Council reference PA16/08969

⁵ Council reference PA18/03831

⁶ Council reference PA21/07757

⁷ Council reference PA21/07698

Reasons

Evidence

11. Together with the site location plan, the appellant has submitted two Statutory Declarations, which he has signed and had witnessed by a solicitor, ensuring that they comply with the Statutory Declaration Act 1835. These are dated 10 June 2021 and 14 October 2021. I will hereafter refer to the June Statutory Declaration as 'SD1' and the October Statutory Declaration as 'SD2.'
12. SD1 indicates that Mr Mitchell and his wife have owned 'the site' identified on the attached exhibit AEM1 since August 1979. The previous use of the land was for aggregate sales and a builder's yard and before that it was a historic mine tip. The previous use for aggregate sales and a builder's yard ceased when he purchased the land. On 1 August 2004 a static caravan was placed on the land by his daughter and her partner. It had all the necessary facilities to reside independently, including electricity, water and a septic tank for foul. The land, buildings and caravan have been used for the mixed purpose of residential and the batching of concrete.
13. SD1 goes on to state that the caravan was granted a lawful use on the site on 21 November 2016. The caravan is presently unoccupied due to refurbishment. The following exhibits are included with SD1; exhibit AEM.1- Site Location Plan with land edged in red; exhibit AEM.2- Aerial imagery of the site (not to scale) labelled 2001, 2005, 2009, 2013, 2017, 2019, 2019 (2) and 2020; exhibit AEM.3- Decision Notice for Certificate of Lawfulness Council reference PA16/08969.
14. SD2 indicates it is responding to the concerns raised regarding the abandonment of the caravan granted lawfulness in 2016. Mr Mitchell states that there has not been abandonment. He states that his long-term intention is to maintain a residential unit in this location. It was occupied by his daughter from 2016 to 2018. In 2018 he applied for planning permission to remove the caravan and replace it with a bungalow. Following withdrawal of the planning application, he rebuilt the workshop and decided to replace the caravan as it was tired and outdated.
15. SD2 goes on to say the replacement caravan was brought onto the site in March 2020. It is placed as close to the lawful position as the access to the area would allow as well as being able to connect to services. Despite being in a different location, the workshop building has not been built over the lawful position of the caravan agreed in 2016. The caravan was moved because he did not want it to become soiled and potentially damaged while not being occupied. Council tax has been paid on the caravan since 2008. Prior to building his house in 1982 the whole of the land has been used for the batching of concrete. He used the entire site to store materials, equipment, and machinery to batch the concrete. No further exhibits were provided.
16. Other information includes a supporting statement submitted with the original application. Two letters, dated 28 September and 11 October 2021, responding to the Council's concerns, and setting out the appellant's case in respect of relevant case law pertaining to the planning unit as well as abandonment of the lawful residential use of the caravan established in 2016. The letter dated 28 September 2021 includes an extract plan from a 1982 permission for the appellants house at Tresten.

Whether the current use of the land is the mixed use described

17. In cases where there is a dispute as to whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the primary (as opposed to incidental) uses of that unit. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of a material change of use. In respect of the determination of a planning unit, *Burdle*⁸ is the lead case.
18. *Burdle* held that the planning unit is normally the unit of occupation, unless a smaller area can be identified, which as a matter of fact and degree, is physically separate and distinct and occupied for different and unrelated purposes. Three separate broad categories are identified for planning units, those include a) a single unit of occupation with a single primary use with ancillary and incidental activities; b) a single unit of occupation with two separate primary uses that are not incidental to one another (mixed use) or c) a unit of occupation where two or more physically separate areas which are occupied for different and unrelated purposes. Each area in scenario c) forms a separate planning unit. I will hereafter refer to these broad categories as category (a), (b) or (c).
19. The appellant has outlined in the LDC that the unit of occupation is a single planning unit in a mixed use of concrete batching and residential by virtue of the siting of a residential caravan.
20. From what I saw on site, the site is accessible at a mid-point on the land via a single vehicular access from Church Hill. A hard surfaced track leads you to a building with a modern industrial appearance. Due to the topography of the land, the track then slopes steeply downwards towards the ready mix concrete batching plant at a lower part of the site. To the left of the vehicle access as you enter, the land slopes upwards and is less developed with overgrown scrub and trees. A hard surfaced track provides access to the static caravan and a polytunnel, sited at a higher level than the workshop and access. The land surrounding the caravan, polytunnel and hardstanding is walkable but largely consists of overgrown scrubland and semi mature trees.
21. The caravan on site appeared to be connected to the necessary utility services and cesspit. Evidence with the appeal indicates the caravan has not been occupied since it was placed on the land in March 2020, and there was no evidence on site of any current occupation. The polytunnel was approved in 2021 for the growing of fruit and vegetables, but not for commercial purposes, and the modern industrial building was granted permission in 2021 as a workshop in connection with the concrete batching use.
22. I appreciate that there is a single vehicle access into the site and all of the land is owned by Mr Mitchell. Nevertheless, there is a notable difference in levels between the ready mix concrete batching plant area and the scrub land where the caravan is being stored and the polytunnel has been erected. The difference in levels and the distance delineates a clear physical separation between the two uses. The difference in character and appearance also makes them distinct from one another. From what I saw on site, the area to the southwest appears to be in use as a ready mix concrete batching plant, with parking, turning and a

⁸ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

workshop. However, the land to the northwest is being used for agricultural purposes (growing of fruit and vegetables) and the siting or storage of a static caravan.

23. There is no indication that the polytunnel and caravan have any current functional link to the concrete batching use. Even if the static caravan was occupied for residential purposes, other than the access, there does not appear to be any functional link between the use of the caravan for residential purposes and the concrete batching site. With the categories set out in *Burdle* in mind, together with what I saw on site, it is my judgement that the current site and layout aligns with category (c), which is a unit of occupation with two physically separate and distinct areas being used for substantially different and unrelated purposes.
24. Consequently, based on the evidence before me it has not been demonstrated, on a balance of probabilities, that the land is currently being used for a mixed use of the site for ready mix concrete batching and for the siting of a residential caravan.

Whether there is an established mixed use on the site

25. Notwithstanding the above, the appellant contends that the mixed use of the site commenced when the initial caravan was brought onto the site in 2004. Following the relevant 10-year period (2014) being surpassed, the mixed use was established and has not been abandoned or lost by virtue of a supervening event⁹. Consequently, in that scenario the residential caravan could be positioned anywhere on the land identified, which includes its current position.
26. The appellant owns the whole of the land outlined in red and began using it for the manufacture of ready mix concrete prior to gaining retrospective permission in 1986¹⁰. The site location plan showing the site area approved for the permission cannot be produced, however the Council has no evidence to show that the area granted planning permission was not that outlined in red on the application plan. As such, based on the appellant's evidence set out in SD1, the site identified on the plan benefitted from this permission, subject to conditions. At this time, the site would have been a single planning unit being used for a primary use (ready mix concrete batching plant) with ancillary and incidental activities.
27. In 2004, the appellant moved a caravan onto the site. The caravan was occupied by his daughter and her partner for an initial period and then by an employee. In 2016, the appellant submitted an LDC for the existing use of the land for the stationing of a caravan for independent residential use. The LDC was granted, and the area of land identified for the LDC was tightly drawn around the siting of the caravan. There was no suggestion of a mixed use of the wider area. In addition to the appellant's SDs, photographs taken by the Council during their consideration of the 2016 LDC application, and the aerial imagery provided in SD1, provide context to the caravan's position and the physical appearance of the land between 2005 and 2016.
28. Based on this evidence, the caravan was positioned to the rear of the previous workshop in 2004. It was a static caravan with all the necessary facilities, which was orientated to face the back corner of the old workshop.

⁹ R (on the application of Ocado Retail Ltd) v Islington London Borough Council [2021] EWHC 1509 (Admin)

¹⁰ Council reference C1/8600285H

29. The level of separation and the physical distinction between the caravan and the concrete batching plant was less obvious than at present. However, the overgrown land to the northeast was situated at a higher level than the caravan, with a steep bank enclosing the space to its rear. The level difference together with the banked area clearly separated the caravan from the land to the northeast. Further to this, the space between the front of the caravan and the back corner of the workshop, formed a small but well-defined external area. In this respect, the layout at that time would suggest that the small area to the front would have been used incidentally in connection with the residential use of the caravan. The aerial imagery shows that between 2004 and 2017 the caravan is in the same location, and there is no obvious evidence of any other residential use or activities having occurred elsewhere on the land.
30. A Statutory Declaration (SD3) was submitted with the LDC in 2016. The appellant states that the caravan had all the necessary facilities for independent residential living and was used by his daughter and later an employee. The employee worked as a driver as well as a batcher, with his presence providing security on the site. SD1 submitted with this current appeal states that the land, buildings and caravan have been used for the mixed use of residential and the batching of concrete across the whole of the site since 2004.
31. SD3 does not indicate any mixed use or residential activities occurring anywhere other than the caravan. SD1 states that it occurred elsewhere on the land, but this is a vague and ambiguous statement. It does not provide any further understanding of how the land or buildings were being used as a mix of the two uses across the whole of the site at that time. Aside from the position of the caravan, the photographs and aerial imagery also provide no evidence for me to determine otherwise. As such, based on the layout of the site at that time, together with evidence in SD1 and SD3, it is my judgement that the residential use was being carried out in the caravan as well as the small distinct area to its front, and not the whole of the site.
32. I note that the access was shared at that time, as well as a parking area. Also, that the employee living on the site provided security. However, there are many instances where a shared access and parking area does not necessarily mean it is a single unit of occupation in a mixed use. Also, the employee's job role was as a driver and batcher, and the security function was not something that extended to the appellant's daughter. In this regard, the evidence does not demonstrate, on the balance of probability, a clear functional link between the two uses.
33. Accordingly, the evidence submitted with this LDC is imprecise and ambiguous, and does not demonstrate, on a balance of probabilities, that a mixed use of the site was established across the whole of the site between 2004 and 2014. In my judgement, the unit of occupation included two physically separate and distinct areas for substantially different and unrelated purposes. This would not have been a mixed use, but the formation of a separate planning unit, which involved the stationing of a caravan for residential purposes.

Other Matters

34. *Uttlesford*¹¹ does indicate that communal facilities, such as access and parking, can constitute the same planning unit, however, this does not extend to all planning units. Aside from the shared access and parking, this case is materially different to *Uttlesford*, which relates to a garage being used as a granny annex being within the same planning unit as the host dwelling. This is because there is a physical and functional link between the dwelling and granny annex, resulting in a single planning unit. In this instance, despite there being a shared access, the two uses are different, physically distinct from each other and are being used for unrelated purposes. As such, despite the shared access it does not form a single planning unit with a mixed use.
35. I note that there are other matters in dispute, such as, whether the granting of the LDC in 2016, or the material change of use of the land to a mixed use would have extinguished the original 1986 permission. There is also contention in respect of the 2016 residential use being abandoned by the appellant's actions since 2018. I am directed to *case law*¹² concerning the abandonment and the extinguishing of planning permissions. However, as I have concluded that a mixed use of the site did not occur and is not currently occurring, making a judgement on these other factors would not alter my decision.
36. I have had regard to the comments received from local residents. However, the planning merits of the development are not relevant, and therefore are not an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended. This is an application for a Certificate of Lawfulness, which means my decision rests solely on the facts of the case, and on relevant planning law and judicial authority.

Conclusion

37. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use in respect of the existing use of land for the mixed use of a concrete batching plant and for the siting of a residential caravan 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.

M. P. Howell

INSPECTOR

¹¹ *Uttlesford DC v SOS and White* [1991] 2 PLR 76

¹² *Panton and Farmer* (JPL 461 1999); *Hughes v SSETR and South Holland DC and Prossor* (1968) 67 L.G.R. 109.