



Appeal Decision

Site visit made on 10 October 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th December 2023

Appeal Ref: APP/D0840/X/22/3305580

The Caravan, Road From Lanvean To Lower Lanherne Farm, St Mawgan TR8 4HH

- 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 a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs Thomas Greaves against the decision of Cornwall Council.
 - The application Ref PA20/10039, dated 6 November 2020, was refused by notice dated 4 March 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ('the Act').
 - The use for which a certificate of lawful use or development is sought is Use of land and caravan for holiday use.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Given the nature of the appeal, there was no need to undertake an accompanied site visit. When I visited the site, I did so alone and viewed it from the public highway. My decision is made on this basis.

Reasons

3. The main issue is whether the Council's decision to refuse to issue a certificate was well founded.
4. Section 191(1)(a) of the Act allows for any person to ascertain whether any existing use of land is lawful. The time limits after which no enforcement action may be taken against breaches of planning control are set out in s171B of the Act. In respect of the use that is the subject of this appeal, the period is 10 years ('the relevant period'). The relevant period is taken from the date that the application for the certificate was made to the Council, 6 November 2020. It is for the Appellant to prove, on the balance of probability, that the land has been used continuously for the claimed use since 6 November 2010 ('the relevant date').
5. The caravan and its associated development is sited in the open countryside on the east side of a narrow lane that runs north from the small settlement of St Mawgan. It lies in a small area of woodland, with a vehicular access from the lane towards the north-eastern corner of the land.

6. The evidence shows that the Council, or its predecessor, have investigated the caravan on three occasions. It was found, in 2007, that the caravan had been on the land for more than 10 years and, therefore, its siting was immune from enforcement action. However, the use of the caravan was not established at that time. In 2015, despite the title of the investigation being 'Stationing of caravan for residential use', the Council tells me in its statement that the "use [was] again not investigated". This was the outcome again following an investigation into the 'change of use of land for stationing of a cabin' in 2020 .
7. From this, it is clear that a caravan has been sited on the land for more than 10 years. This is agreed by the parties; it is whether the case has been proven for its continuous use for holiday purposes that divides them.
8. Put briefly, the Appellants' position is that, on the balance of probabilities, the use of the caravan for holiday purposes commenced in 2006. At that time, it was owned by a Mr and Mrs P (here, and when referring to other third parties, I use initials for the sake of those persons' privacy). They say that Mr and Mrs P used it uninterrupted for at least 10 years from 2006 to 2016. It was not used from 2016 to 2019, when the Appellant bought the land. During this period, the Appellants say that the use remained dormant, before they began using it for holiday purposes after their purchase. They further say that the use was not abandoned during the period from 2016 to 2019.
9. In support of their case, I have a statutory declaration jointly signed by the Appellants, one signed by Thomas Greaves alone, and others from SE and DT. Due to the penalties involved in making false declarations, I give these documents significant weight.
10. In the declaration of Mr Greaves, he says that he has been a local resident since 1998 and the site is close to his family home. He says the caravan was put on the site in 2006, and he passed the site regularly. On his declaration, he says that Mr and Mrs P used the caravan for holiday use over the 2006-2016 period. The use, he says, was regular, with lights in the caravan on in the evenings and children playing, and he says the land was maintained to a high standard. In their joint declaration, Mr and Mrs Greaves state that they bought the land in 2019 and use it as a "bolt hole/getaway" as often as possible.
11. In his declaration, SE, whose address is in nearby Porth, states that he has passed the land daily from 2009 and saw that there was "regular occupation" of the land and caravan, citing lights, car movements and the owners maintaining the land. He also says that he sees the present owners using the caravan.
12. DT, of nearby New Farm, wrote a letter and later made a declaration. In the former, he states that the static caravan "was placed on the land around 2006 and their [Mr and Mrs P] domestic activity was ongoing, year-round for well over twelve years". This was modified to a use occurring for over ten years from 2006 up until it was sold to Mr and Mrs Greaves in 2019". This use, he says, was throughout the year, and he was aware of this through lights in the evening and their car being parked there overnight. He also occasionally mowed the grass for them.
13. AT made a statement of truth. She has lived in the area since 1981, including at nearby New Farm, her parents' farm, until 2008. She has visited New Farm regularly since. She knew Mr and Mrs P and their children, who were

neighbours. When they left Lower Lanherne Farm in 2006 they kept the woodland, which they had levelled for the caravan in 2005. She says that they told her that they would stay on the land when they wanted and that they started doing so overnight in 2006. They had a generator and electrics installed by the end of that year. She said that she regularly saw members of Mr and Mrs P's family using the caravan between 2006 and 2018, vehicles on the land and that Mrs P cultivated the land. She particularly recalls Mr and Mrs P being regular visitors in 2012. Since 2019, she has seen the caravan used by the Appellants.

14. In addition to the declarations, a number of letters in support of the certificate application have been provided. NP is a tradesman who has lived in nearby St Eval since 2009. Together with their partner, JH, they frequently pass the site for business and pleasure. They say that for over 10 years they have seen the caravan in domestic use with lots of activity and lights on.
15. NC has passed the site up to a dozen times a year since 1998. He saw the caravan, shed and activities on the site and thought that someone lived there. He says that this activity has been carried out for "certainly the last 15 years".
16. CW said they moved to a property nearby in 2006 and saw lights at night and could hear people enjoying themselves. This gave the impression that people lived there
17. In his letter, DE, a postman in the area for more than 25 years, said that the lane adjacent to the site is on his daily route. He says that for a period of 10-15 years from 2006, he has seen people in residence on the land in the caravan. The land has always been well-maintained and there is often a vehicle parked on the site and signs of "residential domestication are clear year round".
18. JB, a physiotherapist living locally, has regularly used the lane to visit clients over the past ten years. To the best of his memory, he regularly saw a vehicle there and assumed someone lived on the land.
19. GF, a former councillor for the area, was a regular visitor to the area in 2007-08. He confirms seeing people staying there with washing on a line and a vehicle on site. He says that it had the appearance of a well-maintained holiday home. Afterwards, he passed by regularly and confirms that for 10 years up to 2016 the land was in a holiday use.
20. BE says that they maintained the electrical service from around 2007 to allow Mr and Mrs P to use the caravan. They say they carried out this maintenance regularly for over 10 years.
21. For its part, the Council's has provided limited evidence to show that the use is not lawful. The photographs that it provided, whether Google Earth images or those arising from enforcement investigations, are of limited use. Given the number of trees on the site, views provided by the former could not accurately show the use the land was being put to. The latter were taken from the road and were grainy and did not, to my mind, give substantive evidence that the caravan and land were not being used in the manner that is claimed. That its enforcement investigations did not establish the use of the caravan, especially that of 2015 when the use of the caravan was specifically mentioned in the title of the investigation, is surprising.

22. Notwithstanding this, the onus lies with the Appellants to make their case on the balance of probability. None of those people that I refer to, above, provides clear evidence of the actual use of the caravan. Most have viewed this from the lane outside and refer to lights and activity within the site. This is separated from the caravan by some tens of metres, with trees and undergrowth between, and whether passed on foot, bicycle or car, it would not be possible to my mind to be sure how the caravan was being used from there. Only two of the contributors are able to say that they actually entered the site, but neither says that the holiday use was actually occurring when they did so.
23. There is some confusion in the evidence, as some of those that submitted evidence speak of the use occurring after 2016 and before 2019. However, the evidence shows that this was not the case. None of the submissions gives any substantive details of dates of occupation nor the duration of use over the years. Several correspondents say that this use was regular, but they did not explain this further. I have taken note of domestic planting on the site that is described in the horticultural report by RS. However, this does not demonstrate that the site was used in the manner claimed for 10 years, as required.
24. To my mind, further doubt as to whether the use occurred in the manner claimed arises from the sales particulars produced for the sale of the caravan and land in 2019. It makes no reference to a holiday use and simply refers to an "old static caravan used for storage etc". Had it been used for holiday purposes for ten years at that time, whether this was 'established' or not, it seems most likely to me that it would have been referred to. I make this point, given the increase in value that this would have meant with its proximity to the north Cornwall coast.
25. The Appellants seem to suggest, in their Rebuttal submission, that the "etc" in the sales particulars could cover the claimed holiday use. If that is the point being made, I do not agree. To a degree, I accept the point that as the use was not lawful it would not be claimed to be so in the sales particulars. However, I would expect the use to be mentioned, albeit in a highly qualified manner that would make prospective purchasers aware that this had not been lawfully established and enquiries should be made to the Council. This is commonplace in estate agents' advertisements.
26. In their Rebuttal, the Appellants say that the land was being sold at a price that reflected the use. They say that the Statement of Truth by WC, a member of the Parish Council, makes it clear that "the selling agent did represent to potential purchasers...that the caravan had been there (on site) for 10 years and that use for weekends etc would be lawful". WC says that this arose from an email to the Parish Council from an "immediate neighbour 'G'". From this, I cannot be sure, on the balance of probabilities, that this was actually said by the selling agent. Further, on this matter, the Appellant's assertion that it was being sold at a price that reflected this use is not borne out by the evidence before me. The sales particulars simply set out that offers were invited and I cannot be sure that the price did reflect the use.
27. Notwithstanding the above, I find it likely that a holiday use was carried out. However, I cannot conclude with the required degree of certainty that this was continuously for ten years. Even had I found this to be the case, the evidence lacks the accuracy that is essential to enable a certificate to be issued. As the Government's Planning Practice Guidance ('PPG') puts it, "Precision in the

terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it"¹.

28. In this regard, I note the arguments made in the 'Response – Legal Issues' provided by Stephens Scown LLP. I agree with the point there that if a use is shown to have occurred continuously for a certain period of time, this would be "sufficient to grant a certificate for such duration of use". However, what is lacking in the evidence is just what that duration was. Reference is made to an appeal decision² where an Inspector issued a certificate for the 'Use of the building for holiday purposes with occasional overnight stays'. I have not been provided with the full details of that case, to allow me to see how the Inspector reached that conclusion. However, each case has to be addressed on its individual merits and, in respect of the case before me, I find that reaching such a conclusion would fail to provide the standard of precision that the PPG states is vital.
29. As well as that of WC, another Statement of Truth was provided by LMck who is also a member of the Parish Council. That of WC provided some additional evidence of the enforcement investigations I refer to, above. However, it does not provide substantive evidence that the use did not occur. LMck rode her horse in the area locally between 2012 and 2017 and reported the site to be unkempt and overgrown, and did not appear to have been used. The reference to her husband's observations is merely hearsay. As neither WC or LMck say that they actually entered the site, I give what they say limited weight in the same way I did those writing in support of the certificate that did not enter the site.
30. Taken as a whole. I find that the evidence before me does not show that the use has been affirmatively established over the ten-year period. Therefore, I cannot conclude that the use of the caravan for holiday purposes is immune from enforcement action under s171B(3) of the Act.
31. Having found that the case has not been made for the continuous use of the caravan, I need not address the Council's suggestion that the use became abandoned during the period from 2016 to 2019.

Conclusion

32. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Use of land and caravan for holiday use 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.

Roy Curnow

Inspector

¹ Paragraph: 010 Reference ID: 17c-010-20140306 Revision date: 06 03 2014

² APP/D0840/X/21/3277224