



Appeal Decision

Site visit made on 5 December 2023

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/M1595/X/22/3304656

St. John the Baptist Church, Mucking Wharf Road, Stanford-le-Hope, Thurrock SS17 0RN

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kevin Leyland against Thurrock Borough Council.
 - The application (Ref.22/00809/CLEUD) is dated 10 June 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 or development is sought is described on the application form as: Caravan site.
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Decision

1. The appeal is dismissed and the application for a certificate of lawfulness is refused.

Preliminary and Procedural Matters

2. The appeal is submitted against the failure of the Council to determine an application for a Certificate of Lawfulness for an Existing Use (CLUED) of the site as a caravan site, made under section 191(a) of the Town and Country Planning Act 1990 (the Act). Given that the site was not actively in use as a caravan site and no caravan was on site at the time of the application the Council has questioned whether a certificate relating to an existing use could be granted under s191(a).
3. However, the question of whether a use must be physically existing at the time of an application has been considered by the Courts¹. In *Ocado Retail Ltd* it was held that; *"The law does not require that such a right be exercised on the date when an application for a CLEUD is made (or an enforcement notice is issued), or that it has been exercised throughout the intervening period from the time when it accrued. Instead, the law requires that the right remains in existence at the date when the lawfulness of what it authorises is in issue"*.
4. In other words, if a lawful use right as a caravan site had been established as a result of the passage of time and that use had not been extinguished or lost, the fact that it might not be actually being carried on at the time of the CLUED application does not mean that a certificate under s191(a) could not be granted.

¹ R. (on the application of Ocado Retail Ltd) v Islington LBC [2021] EWHC 1509 (Admin) (paragraph

5. In other words, the key issue in dispute in the case is whether existing use rights as a caravan site existed at the time of the application. More specifically, that entails consideration of whether such rights had become established as a result of the passage of time in relation to the use of the land as a caravan site in breach of condition 1 of application 00/00170/FUL (the planning permission). Moreover, if such use rights had become established, whether they were lost at the point the caravan was removed and a dwellinghouse erected, or whether there is a right of reversion following compliance with the enforcement notice that was served in 2020.
6. As a footnote to those main issues, both parties had made nods to the existence of caselaw within their statements without citing any specific judgments. Given that caselaw is an essential element of my decision I wrote to the parties to set out what I considered to be relevant caselaw, seeking their views on it and asking if there were any other judgments they thought I should be aware of. The Council did not respond and the appellant responded but simply to say that he had no further comments to add. I have referred to the judgments in question in my reasoning below.

Reasons

7. The onus rests with an appellant to provide sufficient information to make their case in relation to a CLUED application. However, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse to grant a certificate, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
8. Section 57(4) of the Act states that, where an enforcement notice is served in respect of any development of land, planning permission is not required for its use for the purpose it could lawfully have been used if that development had not been carried out. The issue of whether that allows for the reversion to a use that had become established as a result of the passage of time was considered in *Hillingdon*². The judgment clearly establishes that such rights of reversion do exist.
9. Furthermore, in *Ocado Retail Ltd* it was held that once immunity from enforcement and lawful use rights that have been established as a result of a breach of condition, with reference to s171B(3) of the Act, those rights need not be treated differently than use rights gained as a result of any other breach of planning control³.
10. When the two judgments are considered, if an accrued right to use the site as a caravan site without compliance with condition 1 of the planning permission had been established as a result of the passage of time, there seems to be no legal reason why the landowner could not exercise those rights and revert to that use, taking account of the provisions of section 57(4) of the Act. The Council has been given the opportunity to comment on that point, with reference to the relevant caselaw but did not respond.
11. Accordingly, my decision effectively hangs on whether the appellant has provided sufficiently clear and unambiguous evidence to demonstrate that the

² *Hillingdon LBC v SSCLG & Aotodex Ltd* [2008] EWHC 198 (Admin)

³ See paras 162, 163 & 164 of the *Ocado Retail Ltd* judgment

condition had been breached continuously for any ten year period following the date at which the temporary permission effectively expired, which was 30 April 2003.

12. It is worth noting that the description of the proposal on the decision notice of the planning permission states "Temporary siting of mobile home". The siting of a mobile home doesn't necessarily indicate use. From the evidence presented it is clear that the proposal was not only to site the mobile home within the churchyard but to allow the applicants to live in it for a temporary period whilst works to convert the church to a residential use were taking place. The siting and occupation of a caravan amounts to a use of land as a caravan site and, despite the description on the decision notice, that is effectively the development for which planning permission was granted.
13. The appellant is now seeking a CLUED for the use of the land as a caravan site. Overhead photographs dating from 2004, 2006, 2010, 2013 & 2015 have been provided which do appear to show a caravan sited in the corner of the churchyard, broadly in the position approved by the planning permission. A further overhead image from 2017 shows what appears to be a caravan in a slightly different position, closer to the church and further away from the boundary of the churchyard and a 2018 photograph shows the dwellinghouse that was subject of enforcement proceedings. What is not immediately obvious is whether the caravan shown in the images prior to 2018 is the same caravan across the whole of the timeframe. The images up to and including 2010 are grainy and of poor resolution such that details cannot be made out. The latter images are sharper but still only the roof is visible and often it is partially screened by foliage from the mature trees within the churchyard.
14. It is not clear if the caravan in 2017 is the same caravan moved to a different position or a new unit. Moreover, the overhead images only provide a snapshot from particular years and are not enough to demonstrate continuity of the breach. There are multiple years between some images.
15. A single photograph of the side flank of a static caravan in situ is provided, referred to as "photo of caravan 2000 to 2018". However, there is nothing to verify whether that same caravan stayed continuously on the site over that period. It is not clear when the image was taken but the land immediately around the unit is overgrown, with a shrub growing across the steps leading to the decking which presumably provided access to the entrance at the opposite side. Whether the caravan was being lived in at the point the image was taken is not certain.
16. It is possible, albeit that the photographic evidence is inconclusive, that a caravan could have been sited on the land from the time of the planning application up until the time the dwelling that was subject of enforcement proceedings was erected in roughly 2017 or early 2018⁴. However, it doesn't automatically follow that a caravan sited on land is being used for residential purposes as a caravan site. Caravans are often used for a range of purposes for example as storage space, to provide cover or an area to shelter from the elements on building sites or they may simply be stored on land. Each of those uses, in the absence of any residential occupation, would be different from use as a caravan site and could represent a material change of use of the land in question.

⁴ Dates taken from paragraph 13 of Appeal Reference APP/M1595/C/20/3249047

17. Consequently, in order to justify the grant of a certificate in the terms sought, it appears to me that the appellant must demonstrate continued use of the site as a caravan site in breach of condition 1 for a period of ten years and not simply that a caravan was situated on land. Or certainly I must be satisfied that if a caravan was sited on the land it was not put to a different purpose at any point which may have resulted in a material change of use.
18. The appellant, who is the present owner, purchased the site in January 2015 and so can only vouch personally for the period after that. No statement or statutory declaration has been provided from the former owners/ occupiers. Thus, first hand evidence from the previous owners of precisely when they occupied the site, whether that was continuous or intermittent, whether the caravan was used for any other purpose, or whether they also resided elsewhere at any point is lacking.
19. A number of eyewitness accounts from those who visited the site and/or interacted with the former occupants have been provided. None of those are statutory declarations which limits the weight I attach, albeit that I have no reason to believe that any of the information was falsely given. Nonetheless, the accounts reflect passing interactions and do not go far enough to demonstrate continuous occupation in my view.
20. A local postman who knew the former owners (Appendix 3 of the appellant's statement) recalls that they lived on site from the early 1990s until about 5 years ago. However, the letter is a general recollection over a period of 25 to 30 years and isn't specific in terms of precise dates or circumstances or whether there was continuity of use over that period. It is not clear if the postman ever physically entered the caravan. Whilst the letter states he delivered post to the Mucking area since the 1990s it is not clear if that was continuously or intermittently.
21. The former warden of the Essex Wildlife Trust (Appendix 4) only commenced employment in that role in 2013 so could not vouch accurately for the period before that. Visitors to the churchyard (Appendices 5 & 6) could recall the former occupants living in the caravan but neither could specify exact dates or how long that occupation covered. The septic tank was emptied by a company (Appendix 7) over the period 2008 to 2014 but that is not necessarily evidence of occupation and the letter does not explicitly refer to whether the occupants were living in the caravan when visits were made. In any event, the company only visited over a 6 year period.
22. Similarly, the tree surgeon (Appendix 8) refers to carrying out work for the former owner of the site – roughly 6 jobs between 1989 up to around 2010. He recalls the static unit being brought to the land in about 2000 but the letter does not explicitly state whether or when it was occupied. The former blacksmith recalls visiting to discuss work related to the conversion of the church between the late 1990s up to around 2010. He did note that the project 'never seemed to get off the ground'. Why visits stopped in 2010 and whether that reflected a change in circumstances is not clear.
23. Appendix 10 relates to the tenant from 2015 onwards which was after the appellant purchased the site so cannot vouch for the earlier period.
24. Overall, the eye witness accounts are insufficiently precise in respect of dates of occupation to demonstrate continuity of occupation over any ten year period

from April 2003 when the temporary permission expired. The information is from visitors who would be unlikely to be fully aware of the former occupants full personal circumstances in terms of their living arrangements. None of the information is from those who could be described as close friends or relatives who may have more in depth knowledge. Few of the accounts cover a full ten year period and those that do are vague and imprecise in details.

25. It can be difficult to obtain robust evidence stretching back years into the past but the absence of any statements or other information from the former occupiers such as bills, Council Tax records, or any other financial or documentary evidence is difficult to overlook. In my view, the detail and clarity is somewhat below the level of information required to justify the grant of a CLUED. Whilst it would seem that the former owners did occupy the caravan in breach of condition 1 the evidence before me does not demonstrate that the condition had continually been breached for a period of ten years. Even if a caravan was in situ over the requisite period, of which there is some doubt, it is not clear if it was continually occupied, simply stored or put to another purpose over the period from 2003 onwards.
26. I have had regard to all other evidence presented, including correspondence between the appellant and the Council and historic case files relating to the application but none of it overcomes my concern with regard to the paucity of information relating to the matters raised above. As such, whilst the Council has provided little information of its own in relation to the occupation of the site in the relevant period, the information presented by the appellant is ambiguous and insufficiently precise.
27. Therefore, although I have reached a different view from that of the Council in respect of caselaw relating to rights of reversion, I cannot conclude, on the balance of probability, that the site ever acquired lawful use rights as a result of the passage of time prior to the service of the enforcement notice in 2020. In the absence of any clear evidence in that respect it follows that there is no right to revert to a use as a caravan site under the terms of s57(4) of the Act. As such, I cannot conclude that the site benefitted from lawful use rights for that purpose at the date the application was made. Accordingly, I shall dismiss the appeal and refuse to grant a CLUED for the use.

Chris Preston

INSPECTOR