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## Appeal Decision

Site Visit made on 8 January 2024

**by J Whitfield BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities**

**Decision date: 7<sup>th</sup> February 2024**

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**Appeal Ref: APP/P2935/X/23/3316993**

**Land North East of South Linden House, Longhorsley**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 A Kelcher against the decision of Northumberland County Council (the LPA).
  - The application Ref 22/02704/CLEXIS, dated 25 July 2022, was refused by notice dated 19 November 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 as "the caravan has been sited at the Fishery and used for residential purposes for more than 4 years and is no immune from planning enforcement action and must be deemed to be lawful."
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the LPA's decision to refuse the LDC application was well-founded.

### Reasons

3. S191(2) of the Act states that uses are lawful at any time if: (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. The LDC application seeks to establish that the use of the land for the siting of a caravan for residential purposes is lawful on the basis that the time for enforcement action has expired.
5. S171B(1) of the Act sets out that, where there has been a breach of planning control consisting of the carrying out of operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. S171B(2) of the Act states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement

- action may be taken after the end of the period of four years beginning with the date of the breach. S171B(3) states that, in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
6. The appellant's case is that the evidence demonstrates, on the balance of probabilities, that the caravan was sited on the Land and used for residential purposes on or before 25 July 2018 and the use continued for four years thereafter. Thus, it is said, the development is immune from enforcement action under S171B(2).
  7. However, S171B(2) relates to the change of use of a building. The siting of a caravan for residential use would normally amount to a material change of use of land which falls to be considered under S171B(3). In that case, the appellant would need to demonstrate, on the balance of probabilities, that the material change of use of the Land to the siting of a caravan for residential purposes took place on or before 25 July 2012 and the use subsisted continuously for ten years thereafter.
  8. The appellant has made no submissions that the caravan amounts to a building. Indeed, the appellant's own evidence is that the LDC submission is for the existing use of the Land for the siting of a caravan, not that a change of use of a building to residential purposes has taken place.
  9. Where an LDC relates to a caravan, the word should be construed in accordance with the statutory definition laid down in S29(1) of the Caravan Sites and Control of Development Act 1960, that being, "any structure designed or adapted for human habitation which is capable of being moved from one place to another".
  10. In order to be considered under the four year time limit in S171B(2), the caravan would have to amount to a building. S336 of the Act defines a building as any structure or erection and any part of a building. The Courts have identified in *Skerritts*<sup>1</sup> three primary factors as being determinative of what constitutes a building. They are they are size, permanence and physical attachment. In *Measor*<sup>2</sup> the Court held that a structure which satisfies the definition of a caravan would not generally satisfy the definition of a building having regard to the factors of permanence and attachment.
  11. Whilst I have not been given the measurements of the caravan, at my site visit I was able to see signs attached to it indicating the model name and size. The dimensions on the signs indicated that it would fall within the definition of a caravan set out in S13 of the Caravan Sites Act 1968. Indeed, the size is such that I see no reason why it would not have been brought onto the site either in its complete form or in two sections subsequently attached together.
  12. I saw from my visit that the caravan rested in place on the ground with chocks in front of the wheels and with it resting on two small concrete blocks at the front. There was no evidence of it being physically attached to the ground, other than what appeared to be single waste pipe.
  13. There was no tow bar apparent on the caravan, however, the structure does not have to be capable of being moved on its own wheels, it is sufficient that it

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<sup>1</sup> *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102

<sup>2</sup> *Measor v SSETR* [1999] JPL 182

could be picked up intact and put on a lorry by crane or hoist in order for it to still be mobile.

14. Whilst the aerial photography shows the caravan in the same position in 2017, the fact that it has remained in the same place for a number of years is not necessarily indicative of sufficient permanence to be considered a building. It is not unusual for caravans to be sited in one place for a relatively long period, often they are not moved unless they are being taken off the land or replaced. Thus, I consider that the length of time it has stayed in one place to carry limited weight in the consideration of the test of permanence.
15. Overall, having regard to the factors of size, attachment and permanence, I conclude that the caravan does not amount to a building. Thus, the development amounts to the material change of use of the land and it falls to be considered against the ten year period set out in S171B(3).
16. On that basis, the appellant's earliest evidence of the use of the land for the siting of a caravan for residential purposes is an aerial image from July 2017 as it is now which shows the caravan in situ and a signed statement from an M Mosdale who states that the caravan was brought onto the land in July 2017.
17. Even if that evidence was in itself sufficient to discharge the burden of proof, it falls some way short of demonstrating that the material change of use of the Land to the siting of a caravan for residential purposes took place on or before 25 July 2012. Thus, the time period for taking enforcement action had not expired at the date of the LDC application.
18. Consequently, it has not been demonstrated, on the balance of probabilities, that at the date the LDC application was made, the use of the land for the siting of a caravan for residential purposes was lawful under S191(2) of the Act on the basis that no enforcement action may then be taken in respect of it.

## **Conclusion**

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land for the siting of a caravan for residential purposes 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.

*J Whitfield*

**INSPECTOR**