



Appeal Decision

Inquiry held on 9 & 12 January 2024

Site visit made on 10 January 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/D1265/X/23/3321316

**Heathlands Football Club, Lower Common Lane, Three Legged Cross
BH21 6RX**

- 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 John Bignell against the decision of Dorset Council.
 - The application ref P/CLE/2023/00114, dated 1 January 2023, was refused by notice dated 28 April 2023.
 - 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 'as a dwellinghouse'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Dorset Council against Mr John Bignell. That application is the subject of a separate Decision.

Preliminary Matters

3. There were originally two appeals against refusals of certificates of lawful use or development (LDCs) for the same use, the only substantive difference being the date against which any immunity from enforcement action should be judged. The appeal relating to the older application was withdrawn shortly before the inquiry.
4. The appellant and his wife are currently living in a former sports pavilion (the Pavilion), which is a two-storey detached building, the upper floor being within the roof space, on the site known as Heathlands. At the inquiry, the appellant confirmed that lawfulness is claimed for use of the entire Pavilion as a single dwellinghouse.
5. At the site visit, I saw that the ground floor is divided into three sections, each accessed by separate external doors, with no internal connections between the sections. At one end is a well-appointed lounge and kitchen, from which stairs provide the only access to the first floor.
6. The central section contains a small kitchenette, albeit there is no tap fitted on the sink, a free-standing fridge/freezer, and a carpeted area with a sofa and arm chair. A smaller room is being used for storage. There are also two very

- small rooms, one containing a toilet and hand basin, albeit currently un-accessible due to stored clothing, and the other full of stored items beyond which a shower riser-rail can be seen.
7. The third section is the most basically decorated, with a laundry room that includes a toilet, separate toilet room, and separate shower room. The largest space mainly contains gym equipment.
 8. On the first floor, the stairs lead directly to a bedroom, from where a door leads to a large bathroom containing a double sink, toilet, shower and free-standing bath. A door leads on from this space to a corridor with storage cupboards either side and then to a further bedroom. Collectively, this accommodation occupies the entire first floor/roof space of the building.
 9. Elsewhere on the site are three mobile homes. I was able to view inside one of those, which had two bedrooms and a kitchen/living space (including a sofa bed) and a small shower room/toilet. I was told by the appellant that all three mobile homes had the same facilities, but I did not see inside them for myself.
 10. At the inquiry, all evidence was heard in person and given on oath. Closing submissions were heard virtually.

Reasons

11. Section 191(2)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) sets out that a use is lawful at any time if no enforcement action may 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). Section 171B(2) of the 1990 Act clarifies that no enforcement action may be taken after the end of the period of four years beginning with the date of a breach consisting in the change of use of any building to use as a single dwellinghouse.
12. The burden of proof is on the appellant and the standard of proof required is the balance of probabilities. If the evidence is sufficiently clear and precise and there is no evidence to contradict the appellant's version of events or make it less than probable, then their evidence should be accepted and an LDC should be issued.
13. As described above, the single dwellinghouse in this case at the very least contains the kitchen/lounge and first floor bedroom and bathroom accommodation. It may also contain the central section and gym/laundry section. Indeed, the appellant confirmed that an LDC is sought for the use of the whole building as a single dwellinghouse. If that is correct, it has an unusual layout due to the lack of indoor connectivity across the ground floor, and that it is suggested that other households use part of the ground floor either separately, or communally. Nevertheless, I have approached the appeal on the basis that the LDC has been sought. In any case, I am satisfied that the building contains all the facilities required for day-to-day private existence and, as such, has the distinctive characteristics of a dwellinghouse.
14. For a lawful use to be established, the use must have continued uninterrupted throughout the four-year period. In this case, the central dispute is when the four-year period started. If I am satisfied that the date on which the breach of planning control commenced, was more than 4 years prior to the date of the application, the Council has not put forward a case that the use may have

- subsequently been substantially interrupted. I have no reason to believe that it may have been. Instead, a second limb of the Council's case is that positive deception has occurred in the planning process, and, therefore, the appellant should be denied any benefit of immunity from enforcement action that may have been gained.
15. The appellant purchased Heathlands Football Club and moved to the site in December 2009. He claims that he and his wife moved into the Pavilion at that time and have lived in it, as a dwellinghouse, ever since. The evidence provided with the application to the Council was ambiguous and imprecise in this account. For example, it included a series of photographs in unspecified locations and vague, unsworn statements from various people saying that they knew of the appellant's occupation of the Football Club, but not necessarily the Pavilion. There were also various receipts associated with renovations, fixtures and fittings or furniture, but without any commentary to explain their relevance.
 16. However, at the inquiry, Mr and Mrs Bignell were consistent in their account of having moved into the Pavilion when they first moved to the site. They explained that the building was in a poor state and needed renovation, but that was done during their occupation. Indeed, a receipt shows that a new bed was purchased in July 2010 for delivery to a 1st floor bedroom and Mr Bignell confirmed that it had been there from that time until a few weeks ago when it was replaced with a new one. This all suggests that, at the latest, the material change of use of the Pavilion to a dwellinghouse first took place in the summer of 2010. However, there are problems with this account as a number of other pieces of evidence suggest otherwise.
 17. In 2011, a Hearing was held in connection with two appeals by Mr Bignell. The first was against the service of an enforcement notice alleging a material change of use of land for the purposes of stationing of caravans/mobile homes for residential use including persons claiming to hold traveller status. The second was against a refused planning application for 10 touring caravans and 10 tents – March until September – using existing shower block (men's women's and disabled) and café.
 18. In their decision letter, the Inspector described the Pavilion as still containing "the 'Home' and 'Away' changing rooms, showers and WCs which are used by the appellant and his family. The former kitchen now provides a day room and is fitted out with domestic appliances and contains a pool table". They also described the rest of the site as containing "2 caravans..., one belonging to the appellant and his wife..., the other occupied by their daughter...Mr Bignell's caravan was occupied by another of the appellant's daughter's [*sic.*]"
 19. The Council have sought to discredit the appellant's now-stated sequence of events by suggesting that the Inspector must have diligently described the site and makes no reference to bedrooms in the Pavilion. However, while the Inspector did not describe bedrooms, they did not describe any first floor accommodation at all. On this, the Council do not contest that first floor storage with staircase access existed prior to the appellant's ownership. It is not clear whether the Inspector went upstairs, but the rigour with which the rest of the site is described, suggests that they may not have done.
 20. In terms of the ground floor facilities, the appellant explained to me that when they first moved in, the kitchen/lounge area had previously been a licensed bar

with bench seating. Throughout the course of their renovations this has subsequently been upgraded to the more comfortable and domestic arrangement now visible. They did not provide an indication of when those works were done, but the former arrangement would not preclude residential living and would not be inconsistent with the Inspector's description, the important parts of which I have set out above.

21. Moreover, while the Council has also suggested that the Inspector confirmed that the appellant and his wife were living in one caravan, and his daughter and her children in another, that is not the case. In fact, the Inspector said that one of the caravans belonged to the appellant, but was occupied by another of the appellant's daughters at the time of their site visit. The distinction in the description between ownership and occupation is important here. There is no indication in the Decision letter as to where the appellant was living at that time. The appellant's account now is not, therefore, inconsistent with the Inspector's comments in 2011.
22. More problematic for the appellant, though, is a Planning Contravention Notice (PCN) with responses dated 14 October 2011. The appellant confirmed at the inquiry that he signed the completed PCN. Within the responses made, there are explicit statements confirming that the building is not being used as a self-contained dwellinghouse and, conversely, that it is being used for washing and toilet facilities, and for preparing food in connection with the use of the land as a caravan site.
23. At the inquiry, the appellant stated that he would have been unable to read the questions or provide the written responses. None of the appellant's witnesses could explain who had completed the PCN, or why it would have been completed the way it had. Their responses on the matter were somewhat vague and inconclusive. Nevertheless, as the appellant signed the PCN, the answers contained within it can be relied upon as a clear statement of fact as to the use of the building at that time. The layout described therein is consistent with the 2011 Inspector's earlier description of the site, and the appellant's description of it, at this inquiry, when they moved in.
24. If the appellant's now stated sequence of events is to be believed, the statements made in the PCN must have been false, being in direct contradiction. Alternatively, it may be that the dwellinghouse use started sometime later with the appellant misremembering the precise sequence of events. Indeed, the appellant could not recall the 2011 appeal proceedings at all well, and Mrs Bignell only had a limited recollection, which casts doubt on the accuracy of any of their current account of events around this time. The only clear contemporary evidence from this time relates to the purchase of the bed and that is only a receipt of purchase, not evidence of it having actually been placed in a first floor bedroom at any given time.
25. If the use commenced some time after 2011, then another alleged contradiction arises in 2016 when the appellant's agent commissioned a valuation of the property. The accompanying report indicates that its purpose was to ascertain the increase in value which arises from the potential grant of planning permission. A subsequent appeal decision describes the permission being sought as for the change of use of land for the purpose of stationing caravans/mobile homes for residential use, including persons holding traveller status (the 2016 appeal). In closing submissions, Mr Ephraim confirmed that

the report had been commissioned to establish whether the site would be viable to make an affordable housing contribution, should permission have been granted. That reflects the comments in the valuation report.

26. The valuation report gives a description of the existing accommodation at the site. It describes the dimensions of the Pavilion and that within it are communal facilities including male and female toilets and washing facilities, laundry facilities and a dayroom. It makes no reference to a dwellinghouse use or bedrooms.
27. Despite having commissioned the survey himself, Mr Ephraim's understanding of the report and the instructions were somewhat vague. However, under cross examination, Mr Ephraim explained that it would not have been necessary for the valuer to enter the Pavilion or to go upstairs as valuations are based upon gross external dimensions. Thus, he would only know of the existence of bedrooms if he had been told about them.
28. While I appreciate that a valuation of property for sale, for example, might need to take full account of the extent of internal accommodation and its use, I note that this report was to inform a planning application about the use of the site as a caravan site. Its purpose was to consider whether an affordable housing contribution should be made if that particular permission were granted. I see no reason that such would be dependent upon what other uses the building was or could be put to. It strikes me that all that would have mattered was that the building was capable of providing the required facilities without further investment. For that purpose, I am persuaded that it would not have been necessary for the author to comment on other accommodation that happened to be in the building, or indeed to enter it.
29. Moreover, like the 2011 appeal decision, the Council's suggestion that this report demonstrates that there was no sleeping accommodation is dependent on what it does not say, rather than what it does. There is no dispute that a first floor existed in 2011, or in 2016. It is simply not described. Therefore, the valuation report does not cast doubt on the appellant's sequence of events that a dwellinghouse use commenced before that.
30. In the event, the planning application was refused and the 2016 appeal submitted. It was determined following an inquiry where Mr & Mrs Bignell and Mr Ephraim once again gave evidence.
31. In their decision, the 2016 appeal Inspector did not give details of the internal arrangement of the Pavilion, nor the uses it was put to at that time. The decision letter describes that the proposal was for four caravans/mobile homes that were already at the appeal site. It goes on to clarify that the proposal was for two touring caravans and two mobile homes to accommodate four households.
32. One of those households was said, in the decision letter, to be Mr & Mrs Bignell. It is further clarified therein that the mobile homes were occupied by one of Mr & Mrs Bignell's children and the other by their daughter-in-law. While it is said that Mr & Mrs Bignell were one of the households intended to be accommodated by the permission sought, the Inspector did not specify where Mr & Mrs Bignell were living at that time. It is, however, said that they had always lived in caravans and the Council infers that this is categorical confirmation that they were doing so at that time.

33. Indeed, that conclusion is a reasonable one, not on the strength of the Inspector's words alone, but on the contemporaneous written evidence of Mrs Bignell to that inquiry. There, she categorically stated that there were "4 caravans/mobile homes within the site, one of which is occupied by my husband and I". Unlike in previous submissions, the word 'occupied' is used and this does appear to be a clear statement of fact that Mr & Mrs Bignell were living in a caravan at that time, and not in the Pavilion.
34. Mrs Bignell now maintains that they only ever used the caravan for travelling in, but that does not adequately explain her choice of words at the time, which are within the context of explaining where all of her family lived (in various mobile homes/caravans). 'Occupied' is the chosen word in respect of all caravans, indicating a consistency in their respective uses. Mr Ephraim's suggestion that 'occupy' might simply mean that they used it is a somewhat generous interpretation of the statement.
35. On the basis of the above, the appellant's claim now, that he and his wife have been living in the Pavilion since 2009, is seriously undermined. That is not, however, to say that the use did not begin after the inquiry closed on 23 February 2018. Indeed, Mrs Bignell gave an impassioned and coherent account to me of the time that she had to care for some of her grandchildren during 2018 and that she put the spare room in the Pavilion to that purpose. On the strength of that evidence, it does seem more likely than not that she was living in the Pavilion, as a dwellinghouse, at that time.
36. The next alleged contradiction occurred in 2020 in a statement, by Mr Ephraim, accompanying another planning application for the stationing of caravans/mobile homes for residential use. This statement clarifies a proposal to re-use the Pavilion as an amenity building. At that time, he also reiterated the older statement that one of the caravans/mobile homes belonged to Mr & Mrs Bignell and another two were occupied by their daughter and son (and their children). There is no reference, this time, to a 4th caravan. Nor is there reference to where their other daughter was living, despite that she had previously been said to live in the caravan/mobile home belonging to Mr & Mrs Bignell.
37. Mr Ephraim suggested in that statement that a refusal of permission would result in the family, seemingly including Mr & Mrs Bignell in this, becoming homeless. The Council now suggest that this was simply wrong if they were, in fact, living in the Pavilion. However, Mr Ephraim explained to the inquiry that they would, in reality have left with their children. Given the long documented history of this family's caring and interdependent living arrangements, that does seem likely, especially given that there was no suggestion then that residential occupation of the Pavilion might have been lawful.
38. Mr Ephraim's denial of any knowledge of the first floor sleeping accommodation at that time, and before, is also plausible since he was employed to submit planning applications in connection with the caravans/mobile homes. Any site meetings would likely take place within the ground floor accommodation and the layout is such that the use of the first floor is not immediately apparent from there. The same would be true for any other occasional visitor who would likely only see the comfortable ground floor living and cooking accommodation. As with many of the earlier alleged contradictions, the omission of any

description of use of the first floor does not actually contradict the claim now made.

39. Nevertheless, in June 2021, a Council enforcement officer visited the site. While Mrs Bignell was unhappy about the conduct of that visit and did not allow entry, it appears that the officer was concerned about the use of land described as the 'playing fields' as a caravan site, and also the use of the Pavilion.
40. In the case of the latter, the Council officer's email states that they needed to confirm that the use of the Pavilion "is ancillary to the continued use as a caravan site and that there is nothing materially different there" (original emphasis). To move matters forward, the officer suggested that they "provide images of the interior of the day rooms (clubhouse) layout (all areas) and email them to me".
41. In response, a series of photographs were provided, with descriptions of what they were showing. The Council say that they were provided by the appellant's daughter. The copies of the emails that were sent state that they were from 'Joanne Smith'. However, the appellant's witnesses stated that they do not know this person – their daughter not being called 'Smith'.
42. While it may be that they did not know that the photographs were being taken, and they may not know a Joanna Smith, the suggestion that they were not taken by their daughter is somewhat implausible. The emails refer to the visit to "my dads property" [*sic.*] and some of the photographs are described as referring to parts of "mum and dads" accommodation. Mrs Bignell suggested in cross examination that she would not allow people she did not know into her property without an appointment, so it is very likely that the photographs, of private internal spaces, were taken by somebody resident at the site. There has been no suggestion that those occupants go beyond Mr & Mrs Bignell, their children and grandchildren.
43. The photographs and accompanying emails describe the ground floor accommodation in the Pavilion as Joanna's day room, utility room, shower and gym room, and mum and dad's day room. The first floor accommodation is described as upstairs storage and toilet, and one of the mobile homes is described as Chantelle kids and mum & dad. The photographs of the upstairs spaces show only a door, a toilet and towel rail, a corridor and some stored bags in the second bedroom where, at the time of my visit, there was a bed.
44. If they were a full and complete record, then they would not support the appellant's claim that the Pavilion was a dwellinghouse at this time because they do not show facilities for sleeping or washing. However, on the basis of my site visit, I know that there are other areas outside the field of the camera lens, that provide the sleeping and bathroom facilities necessary for the building to function as a self-contained dwellinghouse. I am more persuaded that the photographs were not a full and complete record because the ones that were provided appeared to reflect the situation that I saw at my site visit. Therefore, the photographs do not provide evidence to contradict the appellant's version of events.
45. With regard to the above, there are only two obviously contradictory pieces of evidence to the appellant's claim that they have lived in the Pavilion as a dwellinghouse since 2009. The first is the PCN signed by Mr Bignell that explicitly describes a different use and categorically says it is not being used as

- such. The second is Mrs Bignell's written statement to the 2016 appeal in which she says that she and Mr Bignell occupied one of the caravans, albeit the Inspector commented upon the inconsistencies in the Bignells' evidence, without highlighting what those were.
46. If those earlier statements were correct, the appellant's sequence of events now cannot also be correct. As noted above, the appellant's recollection of dates at the beginning of their occupation may well be unreliable as his recollection of other events around that time, including the inquiry and PCN was very vague. Given that it would be an offence to knowingly make false statements on a PCN, I, therefore, think it more likely than not that the PCN was an accurate reflection of the situation at that time and that the dwellinghouse use commenced some time after that.
 47. Precisely when that was is difficult to pinpoint as the appellant's version of events is wedded to it being when they first moved to the site. However, the oral submissions that I heard under oath about how the appellant's family have lived at the site, particularly in 2018, were convincing.
 48. Based on the contradictions highlighted by the Council and the previous Inspector's comments about the reliability of the appellant and his wife as witnesses, their accounts now may not be wholly reliable. However, the use is clearly ongoing now and must have started at some point in the past. Certainly, notwithstanding positioning of the camera in the 2021 photographs, the layout and décor then appears to me to be the same as it is now, so it must have been before that. The most credible evidence that I heard was Mrs Bignell's account of the care of her grandchildren in 2018, so I find it more likely than not that the appellant was occupying the building as a dwellinghouse by the end of that year at the latest. The period from the end of 2018 to the submission of the appeal application in January 2023 would have been over 4 years, sufficient to gain immunity from enforcement action.
 49. However, the Council has also directed me to the case of *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15; [2011] JLP 1183. Here, it was established that where it is claimed that development has become lawful through the passage of time, but the person claiming the benefit of immunity from enforcement action has engaged in conduct which consists of positive deception that is directly intended to undermine the planning process, public policy requires that the person be denied the benefit of the immunity.
 50. If I am wrong about the early period of the appellant's occupation, and the appellant's sequence of events is to be believed in full, then the appellant's actions in completing the PCN can only be interpreted as a deliberate decision to make a false statement for the purposes of denying what was actually going on at the site. A PCN is an integral part of the planning process and so any deception therein must be intended to undermine the planning process.
 51. While Mr Bignell did not write the answers himself, the person completing the form clearly understood the questions and provided cogent answers to them. All this alongside the printed statement on the front page that the person signing it would be held responsible for the answers made and that if they could not read and/or write then any agent assisting them should seek instruction from the Council. On this basis, I cannot accept that Mr Bignell knew nothing of the contents of the form he signed.

52. If the use as a dwellinghouse commenced between 2011 and 2018 then Mrs Bignell must have given a false, or at the very least misleading, statement to the 2016 appeal inquiry. Whether that would have been to further her case in those proceedings, to disguise the fact that she and Mr Bignell were already resident in the Pavilion, or some other reason is unknown. However, without clear explanation, it can only be seen to frustrate one part of the planning process or another.
53. All the other documented engagement between the appellant and the LPA at this time gives rise to no suspicion that the Pavilion was being used for any purpose other than as ancillary to the caravan site as a day room and laundry. Despite their ability to visit the site to verify this, the Council would have had no cause to do so, especially as the only other available documentary evidence of the actual arrangement of the Pavilion at the time – the 2016 valuation report – omitted reference to first floor accommodation and reflected the picture that had already been painted.
54. In the period from 2018 where, on the balance of probabilities, the continuous use of the building for 4 years as a dwellinghouse has been demonstrated, the photographs provided in 2021 seek to paint a different picture. The photographs reflect the current layout of the Pavilion, but the areas omitted are noteworthy.
55. The photograph of the kitchen omits the door to the stairs. The photograph of the main bedroom is a narrow shot of no more than a door to the bathroom. It does not show any furniture or the wider room. The photograph of the bathroom shows only the toilet and towel rail. It omits the double sinks, bath and shower. The photograph of the corridor to the second bedroom shows only walls and a collection of bags, and those bags are then shown in the photograph of the second bedroom but in a narrow shot that shows only that small part of the room.
56. Mrs Bignell, under cross-examination, suggested that beds could not be seen because the rooms were large. But that does not tally with the selectively small areas of those rooms that were photographed. Following my observations at the site visit, I cannot agree that there are parts of the rooms, especially those containing the above crucial information relevant to the question asked, that would be difficult to photograph. Rather it appears to me that very careful positioning of the camera would have been required to exclude the beds from the bedrooms and washing facilities from the bathroom. Having never been into the building, though, the Council officer would not have known that there were parts of the rooms missing.
57. While the appellant has denied any involvement in taking and submitting the photographs to the Council, I find it more likely than not that they were carefully provided on his behalf to disguise the actual use of the building. Given that the Council officer was clearly seeking to establish that the Pavilion was still being used for purposes ancillary to the caravan site, and requested photographs of all areas of the building, that can only be seen as positive steps to deceive the Council officer. On the basis of the consistent picture that has always been painted as to the use of the Pavilion, there is no obvious reason for the Council not to have been satisfied that the building was being used as a day room, and it is reasonable for them to have accepted what they were being told.

58. If the use as a single dwellinghouse has only been going on since 2018, then those actions on behalf of the appellant prevented the Council from taking enforcement action against the use now claimed, within the relevant period. If, as the appellant maintains, the use has been ongoing since 2009, then the photographs were the latest in a series of efforts described above to frustrate planning decision makers' understanding of the true situation at the site. Given the consistent picture that had been painted, there would be no clear reason for the Council to further investigate the use of the building at any particular point since 2009.
59. With regard to the principles set out in the *Welwyn Hatfield* judgement, I find this to be positive deception that was intended to undermine the planning process. On two documented occasions, in 2011 and 2021, the Council had actively sought to establish the true use of the Pavilion. That the Council were unaware of any dwellinghouse use until the first LDC application was submitted, shows that the deception did undermine the planning process. Given that a successful LDC application would have the effect that, after many years of unauthorised occupation, the appellant would secure lawful residential accommodation at the site, I find that they stood to profit directly from the deception.
60. On this basis, I find that, as a matter of public policy, the appellant should be denied the immunity from enforcement action that would normally be achieved through the passage of time.

Conclusion

61. 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 Pavilion as a dwellinghouse 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 Bale

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr Joshua Ephraim MA MRTPI

He called:

Himself
Mr John Bignell
Mrs Beatrice Bignell
Mrs Sue Freeman

FOR THE LOCAL PLANNING AUTHORITY:

Mr Brendan Brett

He called:

Mrs Elizabeth Adams BA (Hons) MSc MRTPI (Eastern Development Management Team Leader)

INTERESTED PARTIES:

Rev Jonathan Herbert

Documents submitted at the Inquiry

- ID1 Appellant's opening statement
- ID2 Council's opening statement
- ID3 Unredacted front page of Planning Contravention Notice dated 24 October 2011
- ID4 Statement of Common Ground
- ID5 Blank site location plan
- ID6 Council's closing statement
- ID7 Appellant's closing statement
- ID8 High Court Judgement: *Jackson v SSCLG* [2015] EWHC 20 (Admin)
- ID9 Council's Costs application