



Appeal Decision

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 3 July 2024

Appeal Ref: APP/D0840/X/23/3332168

Angarrick Stables, Angarrick, Mylor Bridge, Falmouth, Cornwall TR11 5NX

- 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 M and Mrs D Sheldon Smith against the decision of Cornwall Council.
 - The application ref PA21/10318, dated 14 October 2021, was refused by notice 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 LDC is sought is the use of land for the siting of a residential caravan.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The LDC application form identified the applicants as "Mr M & Mrs D Sheldon Smith", but the statement which accompanied it advised that "Laurence Associates are retained by Mr M Abbot-Compton (the Applicant) to progress an application for a Certificate of Lawfulness of Existing Use...". Similarly, the appeal form states the appellants to be "Mr & Mrs M & D Sheldon Smith", but the accompanying Statement of Case provided by Laurence Associates states "This appeal is being made on behalf of the appellant, Mr Abbott-Compton."
3. No explanation for this discrepancy has been provided: while the appeal in the names of Mr and Mrs Sheldon Smith appears to have been validly made, there is no further reference to them in the representations. The Statutory Declaration made by Mr Abbott-Compton states that he is the owner of the Appeal Site. In the course of the appeal the Council obtained a copy of the Land Registry entry for the Appeal Site, which shows that since 18 August 2020 part of it has been owned by Mr David Grove. Laurence Associates have since advised that Mr Grove is a business partner of Mr Abbott-Compton.
4. Given the lack of clarity as to the roles and relationships of these respective parties, rather than adopting the usual convention of referring to "the Appellant" throughout my Decision Letter, I shall instead use proper names.

Main Issue

5. The evidence of Mr Abbot-Compton is that he has been living in a caravan at the Appeal Site since 2001. The Appeal Site does not have planning permission for residential use, so this would be a breach of planning control. The main

issue for this appeal is whether or not the ten-year period available to the Council to take enforcement action against this type of breach had expired by the date of the LDC application, such that the use is now immune from enforcement. If so, the LDC should be granted.

Analysis

6. When an application is made for an LDC, the burden of proof rests on the Applicant, and the evidential test is the balance of probabilities. The Government's Planning Practice Guidance ("the PPG") explains that if a local planning authority 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.
7. The starting point is to identify the "planning 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. It is usually 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.¹
8. Laurence Associates contend that in this case, the planning unit is the whole of the 6 hectares of land shown outlined in red on the plan submitted with the LDC application. Mr Abbot-Compton purchased this land in July 2001, but unfortunately there is very little evidence as to the use that has subsequently made of it. The address of the Appeal Site is given as "Angarrick Stables", and the statutory declaration made by Jenia Geraghty includes reference to assisting with "managing the Arab horses at the property for a period of twelve months from September 2005 until September 2006", and since then, helping "periodically" with the management of horses, goats and chickens at the property. There is no information as to whether the presence of Arab horses was associated with a commercial or domestic use of the stables and/or wider land, and no information as to whether Ms Geraghty was a paid employee, an unpaid volunteer, or simply helping out as a friend.
9. I note the contention made by Laurence Associates that the entirety of the land outlined in red "is only used for the residential enjoyment of the occupiers of the caravan", and that the activities which take place there include "the small-scale gardening that the appellant partakes in as a hobby". However, the statutory declaration made by David Taylor includes reference to having helped Mr Abbot-Compton since 2001 with work on the land at Angarrick Stables, including "propagating and planting for his horticultural business". There is no information as to whether this help was paid or unpaid, but the reference to carrying out work in connection with a horticultural business on the Appeal Site strongly suggests that at least some of the gardening undertaken by (and for) Mr Abbot-Compton was for commercial purposes, rather than as a hobby.
10. The 6 hectares of land identified on the plan submitted with the LDC application consist of various fields and enclosures, and as a whole, greatly exceed the extent of the garden land associated with even the largest of the nearby dwellings. In the absence of any explanation as to which areas have been used

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

for the various activities mentioned (managing horses, animal husbandry, propagating and growing plants), and the lack of clarity as to any commercial element of those activities, I am not persuaded that the entirety of this land can reasonably be characterised as a single planning unit in residential use. It is possible that there may have been a mixed use, or subdivision into a number of smaller planning units; there is simply insufficient information to tell.

11. It is open to me, as the appointed Inspector, to issue a LDC for only part of the land specified in the application², and Laurence Associates have suggested that the area of land to which the LDC relates could be reduced in size from 6 hectares to 2. However no plan, or any other details, have been provided to show where the re-drawn boundary should lie, and why. The matter of establishing the correct planning unit is further complicated by evidence that the location of Mr Abbot-Compton's caravan has varied over time.
12. The statutory declaration made by Mr Abbot-Compton states that in 2001 he positioned a caravan "in a location south-south-east of the stables." In 2009 he moved the caravan into the shade of large eucalyptus trees directly south of the stables, and then in 2019 moved it on to hardstanding west of the stables. Both parties have provided aerial photographs of the Appeal Site, of variable quality and clarity. Those dated 2005 and 2006 show a small caravan close to a polytunnel in the southern part of the Appeal Site, and those dated 2019, 2020, 2021, 2022 and 2023 show a larger caravan on the hardstanding adjoining the stables. But none of the photographs dated between 2009 and 2019 provide any clear image of a caravan in the area of the eucalyptus trees.
13. Of course, tree cover is likely to obscure views from above. Commenting on the Council's Appeal Statement, Laurence Associates advised that for much of the period during which Mr Abbot-Compton was living on site the caravan was covered in camouflage netting and this, along with its positioning under the tree canopy, made it difficult to see in the aerial images. In response to the Council's concerns that this may suggest deliberate concealment, Laurence Associates stated that rather than for purposes of concealment, "the netting was in place for wind protection for valuable and rare plants." In the absence of any more detailed explanation, I find it difficult to see how covering a caravan in camouflage netting would serve to protect plants from wind.
14. The difference in size between the caravan in the 2005 and 2006 images, and the caravan in the images dated 2019 and later, is at odds with Mr Abbot-Compton's description, in his statutory declaration, of living in a single caravan which was twice relocated within the Appeal Site. I note that in his statutory declaration, David Taylor states "I have in fact delivered two of the caravans for Mark." I also note that in 2011 the Council undertook an investigation of potential breaches of planning control at the Appeal Site, which included the stationing of a caravan for use as a residence. The Council's contention – which is disputed by Mr Abbot-Compton – is that as part of that investigation "evidence was presented that... whilst there had been a caravan on the land that had been resided in for a short while, the caravan was empty and had subsequently been removed".
15. As to other available evidence, Laurence Associates have provided copies of a water bills dated 2 May 2007 and 2 December 2020. These are addressed to Mr and Mrs D Abbott-Compton at Sunrise Cottage, Mylor Bridge and are headed

² S.193(4) of the 1990 Act

“For services at 3 troughs”. In the absence of further clarification, it is unclear how they relate to the provision of water to a caravan on the Appeal Site. The Council has drawn my attention to a planning application³ made in 2009, for development at Sunrise Cottage, Mylor Bridge, in which the applicant was stated to be Mr Mark Abbot-Compton of that address. Laurence Associates advised that Mr Abbot-Compton was “managing” the planning application for the owner of the property, but this is somewhat confusing given that a different name and address is provided for an “agent” acting in that application.

16. There is also a copy of a BT bill dated 7 March 2021, addressed to Mrs D Smith at “Angarrick Stables”, and an email from EDF Energy dated 24 November 2020, which states that since 12 March 2001 they have been the supplier for “The Stables at Agarrack, Downstall Cottage, Mylor.” In the absence of further clarification, it is unclear whether these telephone and energy services were provided to a caravan on the Appeal Site, or to the stable building.

Conclusion

17. The statutory declarations made by Mr Abbott-Compton, Ms Geraghty and Mr Taylor all assert that Mr Abbott-Compton has lived in a caravan at Angarrick Stables since 2001. While this evidence carries considerable weight, it is somewhat undermined by the Council’s evidence that in 2009 Mr Abbot-Compton made a planning application for a separate property, giving his address as that property, and that the outcome of an investigation in 2011 was that a caravan on the Appeal Site was no longer being lived in. These two dates fall within the period, from 2009 to 2019, during which Mr Abbott-Compton states the caravan was sited beneath Eucalyptus trees, but for which no aerial imagery clearly showing a caravan is available. It is not clear how many caravans have been involved in the alleged residential occupation of the land, and it is uncertain whether the submitted utility bills relate to any of them.
18. More fundamentally, the provision of insufficient information as to the use made of the land, and the nature and scale of the activities taking place there, means that it is not possible to establish the relevant planning unit. As the PPG explains, if a LDC is to be granted for one use on a planning unit which is in mixed or composite use, that situation needs to be carefully reflected in the certificate. I find that the evidence submitted in support of the requested LDC is lacking in precision, and contains some significant unresolved contradictions and ambiguities. I consider it insufficient to demonstrate, on the balance of probabilities, that there has been uninterrupted residential use of the entirety of the Appeal Site for a period of ten years.
19. I conclude that the Council's refusal to grant an LDC in respect of the use of the land 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).

Jessica Graham

INSPECTOR

³ Ref C1/PA16/1323/09/R