



Appeal Decision

Site visit made on 7 February 2024

by Roy Curnow MA BSc(Hons) CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2024

Appeal Ref: APP/P1133/X/23/3322835

**Moorwood, Road From Gipsy Corner To Shewte Cross,
Bovey Tracey TQ13 9LQ**

- 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 M Bayles against the decision of Teignbridge District Council.
 - The application Ref 23/00184/CLDE, dated 1 February 2023, was refused by notice dated 28 March 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ('the Act').
 - The development for which a certificate of lawful use or development is sought is Use of building as a permanent C3 dwelling-house.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Following my site visit, I wrote to the Council asking for further information relating to a 2015 planning permission on the land. I have used this information in determining the appeal. There was no need to seek further comments from the parties, as both had referred to this in their submissions.

Main Issue

3. The main issue is whether the Council's decision was well founded.

Reasons

4. Lawfulness is defined in S191(2) as "*uses and operations 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.*"
5. Amongst other things, section 191 of the Act provides that if any person wishes to ascertain whether any existing use of a building is lawful an application may be made to a local planning authority specifying the land and describing the use. Amongst other things, s195 of the Act makes provision for an appeal to be made where a local planning authority refuse to issue a certificate. It is for an appellant to make his case, on the balance of probabilities, in such an appeal. Where the Council does not have any evidence of its own to counter what is

being claimed, the test to be applied to the evidence put forward by an Appellant is that it must be precise and unambiguous.

6. Moorwood lies in the open countryside to the northwest of the small town of Bovey Tracey. The subject of the appeal is a single-storey structure that is in residential use, having five bedrooms, bathrooms and a large kitchen-living-dining area. It is fairly tightly enclosed by timber fences on three of its four sides. These enclose, on its northwest and southeast sides what are clearly garden areas; the latter is the larger and has a hot tub located in it. Outside these enclosures are areas that are used for parking and storage; that to the southwest is quite extensive and was being used for a mixture of parking and storage when I visited.
7. Briefly, the Council's position is that the planning permission granted by virtue of its decision on application 15/00798/FUL, dated 13 May 2015 ('the permission') allowed for the erection of a building. It says that a condition attached to the permission required the removal of the building after 3 years. A building has been built, but the condition was not complied with; therefore, a breach of condition has occurred. The period by which immunity from enforcement action is gained in this instance is 10 years from the date of substantial completion of the building. The breach has not occurred for the required period and, therefore, the development has not achieved immunity from enforcement action.
8. In short, the Appellant agrees with the Council that it is a building that was allowed by the permission. He says it has been occupied since the autumn of 2015, and remains so used. His position is that as the permission was allowed for a building, so the period to achieve immunity is 4 years.
9. The first question to be addressed is what was allowed by the permission? Established case law sets out that the approach to be taken is to consider what the reasonable reader applying common sense would understand the words to mean in the context of the overall purpose of the planning permission. The basic rule is that it should stand by itself, and the meaning should be clear within the four corners of the document. If something is not clear but the planning permission clearly incorporates the application and plans, they may be used as aids to interpretation or to understanding the scope of what is permitted.
10. The description of development on the application form for the permission reads "Application for a temporary dwelling for an agricultural worker, with spouse and three dependants". The letter confirming registration of the application, sent to the applicants on 23 March 2015, set out that the Council had changed the description to read "Provision of temporary mobile home for agricultural worker". Amongst its terms, this letter states "The proposal has been described as set out above, which may vary from that shown on the application forms. If you are not satisfied that this represents an accurate description of the proposal please contact your case officer to agree a variation".
11. I have not been made aware of any disagreement being raised by the applicants, and the description of development was unaltered from this when planning permission was granted on 13 May 2015, subject to four conditions. I read this evidence as showing that the change in description was agreed to by the applicant.

12. Condition 1 attached to the planning permission clearly incorporates the application and plans and they can be used to help determine what was granted permission.
13. A brief schedule of proposed materials is given in the application form, which includes timber clad walls, a cement fibre roof covering and plastic windows and doors. As these might be applied to both a building and a mobile home within the definition set out in the Caravan Sites Act 1968, it does not take things forward. A question on the application form asks for the number of residential units proposed, providing a number of different criteria with various types of accommodation in each. The applicant entered his details under the criterion of 'Key Worker'. In this, there are a variety of types of accommodation including houses, flats, live-work units, sheltered housing, bedsit/studios and, lastly, 'Unknown type'. The applicants did not indicate that the proposal fell within any of these, but wrote at the bottom of the Key Worker section "Temporary Dwelling" and indicated that there was to be one of these. I find that all but "Unknown type" would relate to the erection or use of a building. If a building was applied for, one of these would have been ticked. I further find that "Unknown type" might have covered either a building or a mobile home. Having completed the section in this way indicates to me that, on the balance of probability, he did not propose to erect a building.
14. There were two drawings associated with the application, a 1:2500 plan identifying the landholding and a further plan, purported to be at a scale of 1:2500, that shows the site for the proposed development and the site and description of other buildings within the landholding.
15. It is most likely that the latter plan is not at a scale of 1:2500, though this does not have a significant bearing on my decision. On the plan, a red rectangle indicates the site of a "Tempory Agricultural Workers Dwelling 20m x 6.7m x 3.048 meters" [sic]. These dimensions largely equate to those given in the application form. Importantly, they also correspond almost exactly with the maximum dimensions given in the definition of a twin-unit caravan in section 13 of the Caravan Sites Act 1968. This allows for the following maxima: length – 20 metres; width – 6.8 metres; and internal height – 3.05 metres. This corresponds with that part of the application form that refers to 'Site Area'; there, the applicants wrote "(area of temporary dwelling 20m x 6.7m = 134m²)".
16. The description of the proposed development on the decision notice for the permission does not describe development. However, from an ordinary and reasonable interpretation of the documents associated with the application, it is clear that the permission should be read as allowing for the temporary siting of a mobile home for an agricultural worker for residential purposes.
17. It did not allow for the erection of a building. The notion put forward by the Council that, as there was no condition requiring a mobile home it allowed for the erection of a dwelling, is baseless. Given that the description of the proposal that it seems to have instigated, but certainly agreed with, included the words "mobile home", this was what was permitted and so that form of condition was simply not necessary.
18. It is apparent that there is some degree of inconsistency between the use of the words mobile home in the description of the proposal and text elsewhere in the decision notice.

19. Condition 1 refers to “the works hereby permitted”. The siting of a caravan would be a material change of use of the land and would not amount to ‘works’. However, I find that this was an administrative error, that did not reflect the changed description of the development.
20. Reference is made to “the temporary dwelling” and “the dwelling” in conditions 2 and 3. However, as a caravan used for residential purposes serves as a dwelling to its occupants, I find that these do not suggest that, on the balance of probability, what was permitted was a building. They do not, importantly, say ‘dwellinghouse’, which would have a quite different legal meaning.
21. Thus, from the evidence before me, I find that the permission allowed for the temporary siting of a mobile home rather than the erection of a building as suggested by the parties.
22. Next, it is necessary to establish what is on the site. The parties are in agreement that this is a building. Were it to be a caravan, it would have to accord with the definition of a caravan set out in s13 of the 1968 Act.
23. There is no dispute that what is on the site was, as initially required by this section, designed for human habitation. S13(1)(a) sets out how a caravan has to be assembled. The Appellant’s ‘Personal Statement’ sets out that the “exterior frame of the building was built in two halves and then winched together”. This might accord with the method of constructing a mobile home, but I do not have sufficient evidence to conclude either way, on the balance of probability.
24. The third test, in s13(1)(b), relates to mobility. It states that a caravan should be “when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer”.
25. Here, s13 does not require a caravan to actually be moved. It is, however, more than a hypothetical exercise and I would require evidence to show that, on the balance of probability, the form of movement required by the 1968 Act could be undertaken. The Appellant’s Personal Statement sets out that as there had been no intention to move the dwelling, no jacking points or lifting eyes were provided. I did not see these present when I visited the site. He says that if it were moved the dwelling would be “permanently damaged” and “substantial demolition of internal structures would result”. Furthermore, the extensive area of decking that the evidence shows was part of the initial construction would significantly hamper any efforts to move it.
26. I find that the evidence, including that of my site visit, shows that the dwelling is not movable, in the manner expected by s13(1)(b). That is to say, not being moved momentarily but in the sense of being taken from one place to another and withstanding the stresses and strains that this would entail.
27. Although neither party provides details of the size of the dwelling, neither claims that it exceeds the dimensions set out in the approved plan of 15/00798/FUL. As I have said, these accord with the size limits for a caravan in s13(2) of the 1968 Act.
28. In the light of the above, I find that what is on the site is a building, as posited by the parties. It does not, therefore, benefit from planning permission granted by the Council’s decision on application 15/00798/FUL.

29. From this, it has to be established whether the building and its use have achieved immunity from enforcement action. The time limits for action are set out in s171B of the Act.
30. S171B(1) states that no enforcement action could be taken against building operations after four years from the point that they were substantially complete. The Council supplies no evidence in this regard; it could only go as far as to say that it was not built when an officer visited the site on 26 March 2015. For his part, the Appellant in his Personal Statement says that he and his family "have lived in the residence on a permanent basis for the last 7 years". This is not the same as showing that the building was substantially complete for four years. Although I do not say that it has not been substantially complete for 4 years, this has not been demonstrated in a precise and unambiguous manner.
31. S171B(2) sets out that, in terms of use of land, the four years requirement relates to "a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse". This is not the case here, where the evidence put to me by the Appellant shows that the building was constructed for use as a dwellinghouse. It was not used for another purpose from which a change of use occurred. Therefore, the four-year period is not applicable to this development.
32. The use of a building as a single dwellinghouse, from construction without any previous use, is subject to the 10-year 'rule' in s171B(3). The evidence put forward by the Appellant, and not countered by the Council, is that the use has been undertaken for a period of 7 years. Therefore, the use of the building as a dwellinghouse is not immune from enforcement action.
33. I note the Appellant's comments in respect of what he calls the "somewhat confused position" in its determination of the application for a certificate. However, these actions do not impact on my reasoning and decision, so I need not refer further to them.
34. Therefore, whilst I find that the Council's decision to refuse to issue a certificate of lawfulness was well-founded, I do not do so for the same reasons that it gave. The evidence before me pointed in a different direction.

Conclusion

35. 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 building as a permanent C3 dwelling-house 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