



Appeal Decision

Site visit made on 2 July 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2024

Appeal Ref: APP/W1145/X/23/3315537

Bramblewood Farm, Rydon Lane, Holsworthy, Devon EX22 7HY

- 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 & Mrs Walker against the decision of Torridge District Council.
 - The application ref 1/0594/2022/CPE, dated 1 June 2022, was refused by notice dated 2 August 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as "Siting of mobile home with utility room extension used as a permanent dwelling".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of what was being applied for at the time of the LDC application was simply stated on the application form as "C3 – Residential use". The appellants statement that accompanied the application dated May 2022 uses the description "siting of mobile with attached utility area". The Council's refusal notice does not include a description of the development or use applied for and simply cross-refers to the application. In the absence of a clear statement of what has been applied for, the description above is what was used in the details of the appeal section of the appeal form.

Main Issue

3. The main issue is whether the authority's decision to refuse to grant an LDC was well-founded. As a part of that, it is necessary for me to assess what the nature of the development is and apply the relevant law. The planning merits are not material to my decision.

Reasons

Nature of the development

4. There is no dispute that what is now occupied residentially by the appellants was, when it was brought onto the site, a mobile home fulfilling the definitions of a caravan at that point. The mobile home was brought to site in December 2017 with it being connected to a septic tank around that time for foul drainage, being occupied immediately. A borehole was sunk for a water supply. An extension was added near to the time of siting the mobile home which is used as a utility and plant room. I saw that building and the plant

equipment inside it when I visited. The application was therefore made on the basis that the mobile home has become a building, the use of which, the appellants consider is now lawful.

Legal background and assessment

5. S191(2) of the Act states that 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. Neither party has referred to any enforcement notice being in force and so the appellants' case therefore relies upon s191(2) (a). In turn, they also rely upon the time-limit for taking enforcement action as set out in s171B(2) that "where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach."
6. It is a matter of fact and degree whether the work that has been undertaken to the mobile home means that it has resulted in it becoming a building. However, in this case, the mobile home has been brought onto site and the act of development that occurred when the appellants started to live on the site was a material change of use of land for the siting of a mobile home for residential purposes. There was not a pre-existing building the use of which was then materially changed. As such the 4 year period of immunity under the provisions of s171B(2) does not apply.
7. There may be acts of operational developments that have taken place for which a 4 year immunity period under the separate provisions of s171B(1) would apply. The appellants are asking me to consider whether some of those works would have created a building from what was originally a mobile home. However in circumstances where operational development has involved the construction of a building for use as a dwelling house, the use could only become immune after 10 years beginning with the date of the breach under the provisions of s171B(3) of the Act.
8. For the purposes of deciding the main issue of whether the Council's decision was well-founded, I do not need to consider whether what is on site now is a building or whether it remains a mobile home. On the balance of probabilities, the appellant has not demonstrated that the residential use arose from the change of use of an existing building. The residential use was begun less than the applicable time-limit of 10 years prior to the application.

Conclusion

9. 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 siting of mobile home with utility room extension used as a permanent dwelling, was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andy Harwood
INSPECTOR