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# Appeal Decision

Site visit made on 16 July 2024

**by M Bale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 August 2024**

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**Appeal Ref: APP/P1133/X/23/3334075**

**Chapel Cottage, Whitestone, Devon EX4 2JJ**

- 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.
  - The appeal is made by Mr Andy Bailey against the decision of Teignbridge District Council.
  - The application ref 23/01299/CLDE, dated 6 July 2023, was refused by notice dated 31 October 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 2 no. independent dwellings (Use Class C3).
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## Decision

1. The appeal is dismissed.

## Reasons

2. Subject to another proviso that is not relevant in this case, section 191(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) sets out that uses and operations are lawful at any time if no enforcement action may 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).
3. Section 171B(1) of the 1990 Act provides that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, 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. Section 171B(2) relates to the change of use of a building to a single dwelling house, which is not claimed here, and section 171B(3) provides that in 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.
4. 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 a certificate of lawful use or development (LDC) should be issued.
5. Statutory declarations have been provided that set out how in May and June of 2013, two mobile homes were bought onto the appeal site and occupied as independent dwellings by the appellant's sons as their sole residences. The

- declarations state that they were occupied shortly after those dates, more than 10 years before the date of application to the Council.
6. The Council has indicated that it had previously investigated activity at the site and the appellant had previously clarified through a Planning Contravention Notice (PCN) that caravans were occupied for purposes associated with the main dwelling. However, that PCN was completed in 2012 before the date for which the statutory declarations say that the independent residential uses started. The appeal submissions further suggest that the PCN related to previous caravans and not the mobile homes now present at the site. The previous PCN does not, therefore, provide evidence to contradict the appellant's claim.
  7. There are inconsistencies between the statutory declarations and planning and appeal statements. However, that has been clarified, and, in any case, I place far greater weight on the contents of the statutory declarations to which penalties apply for false statements, and are made first hand by the owner and occupiers of the site.
  8. An aerial photograph that only shows one mobile home is said by the appellant to have been taken between the dates specified in the statutory declarations and there is no evidence to contradict this. That the Parish Council have had no reports of any unauthorised occupation since 2013 is also not contradictory evidence.
  9. I, therefore, find that, on the balance of probabilities, two mobile homes were brought onto the site and brought into use as independent dwellings in May and June 2013.
  10. However, I saw at my site visit that the mobile homes have, at some point, been extended.
  11. In respect of the larger mobile home, this appears to have been extended on both sides. It is also surrounded by concrete hardstanding and decking, such that it would take some considerable effort to move it, if that remains possible. This indicates a strong degree of permanence. The appellant indicates that the extensions were built atop separate chassis jacks, as separate timber frame structures, with a simple screwed connection to the main unit by an external piece of timber. However, the internal accommodation is contiguous, and so it seems that some provision, beyond a simple piece of timber, may be required to ensure water tightness and the like.
  12. Thus, it may well be that the side extensions can be detached from the original mobile home, but it is not clear how easy that detachment would be in reality, or the extent of works required to do so and/or move the resultant structure. The onus of proof is on the appellant and the evidence about the construction of the extensions is imprecise. In light of this, and given the sheer size of the resulting unit, I find it more likely than not that by reason of its size and degree of permanence, the larger mobile home became a permanent building when the extensions were added.
  13. The appellant has further confirmed that the extension to the larger mobile home was added approximately 2 years ago. That would date it to somewhere around July 2022, just over 9 years after the mobile home was first brought onto the site. When the mobile home became a building, it is likely that a fresh

breach of planning control occurred. As such, the use of the site for the stationing of a mobile home for residential purposes had not continued for more than 10 years prior to the date of the application. Nor has it been shown to have been a building for more than 4 years prior to the date of the application.

14. The situation surrounding the smaller mobile home is less clear. The resultant structure is smaller, with less additional structure around it, and the extension is said to have been added later. However, there is still a lack of precision as to the works that were done and it is not clear whether or not they predated the application to the Council.
15. Nevertheless, the application sought clarification of lawfulness in respect of both dwellings and on the basis of my findings in respect of the larger mobile home, I find that the appellant's evidence lacks the clarity and precision to certify that, on the balance of probabilities, two independent dwellings at the appeal site are lawful.

### **Conclusion**

16. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of 2 no. independent dwellings (Use Class C3) 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.

*M Bale*

INSPECTOR