
Appeal Decision

Site visit made on 8 August 2024

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2024

Appeal Ref: APP/N2739/X/24/3338845

Old Orchard Farm, Hillam Road, Gateforth, Selby YO8 9LQ

- The appeal is made by Martin Wright under section 195 of the Town and Country Planning Act 1990 against a refusal by North Yorkshire Council to grant a lawful development certificate.
 - The application Ref: 2022/1397/CPE, dated 28 November 2022, was refused by notice dated 11 October 2023.
 - The application was made under section 191(1)(a).
 - The development for which the certificate is sought is "Use of mobile home as dwelling".
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Decision

1. The appeal is allowed and attached to this decision is a lawful development certificate relating to the use described in the application (as modified), which I consider to be lawful at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the use at the time of the application. The planning merits of the use are not relevant to the appeal and there is no planning application before me.
 3. The Council refused the application for the following reason: -
 - "01. Based on the evidence provided and on the balance of probability, the change of use of land from agriculture to the siting of a mobile home for use as a dwelling at Old Orchard Farm, Hillam Road, Gateforth, Selby, North Yorkshire, YO8 9LQ began less than 10 years ago. Therefore, the use is not immune from enforcement action and a certificate of existing lawful use cannot be issued."
 4. The Council's Delegated Planning Report acknowledges that there has been a mobile home occupied as a dwelling on the land continuously since 2009. It notes that the original mobile home on the land was replaced by a new mobile home in a new position on the land some time between June 2018 and September 2019, that the occupiers of the original mobile home moved immediately into the new mobile home and that the original mobile home ceased to be occupied.
 5. The Report asserts that "Whilst the applicants have been living on site in excess of 10 years, the siting and use of a second caravan in a different place on the farm
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broke the continuous use. The clock re-started when the new caravan was brought onto the land and sited in a different place.” The Council’s reason for refusing the application is based on this premise. I do not consider that it is well-founded, for the reasons explained below.

6. The land on which the mobile homes have been stationed is in the north-western part of the application site and contains agricultural buildings and open agricultural storage facilities as well. It is a self-contained and fenced-off piece of land, which is a separate unit from the large area within the application site used as paddocks.
7. In 2009, the use of this land changed from agriculture to a mixed use for agriculture and for the stationing of one mobile home for residential use. This was a ‘material’ change of use requiring planning permission. When the original mobile home was replaced by a new one, there was no further change of use for planning purposes, since the mixed use of the land for agriculture and for the stationing of one mobile home for residential use continued as before without being materially changed by the new mobile home or by the siting of the new mobile home in a different position within the land.
8. The time for enforcement action has therefore expired and the appellant is entitled to a lawful development certificate under section 191(1)(a). The certificate will refer to the mixed use I have described and will be restricted to the land identified in paragraph 6 above.

D.A.Hainsworth

INSPECTOR