



Appeal Decision

Site visit made on 14 January 2025

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2025

Appeal Ref: APP/J1915/X/23/3320911

Land at Primrose Cottage Farm, High Wych Road, Sawbridgeworth, Hertfordshire CM21 0HH

- 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 Ms S Ashley against the decision of East Hertfordshire District Council.
 - The application ref 3/22/1860/CLXU, dated 1 September 2022, was refused by notice dated 17 March 2023.
 - The application was made under sections 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use and development for which a certificate of lawful use or development is sought is described as "A CLEU for the operational development, the siting of the 6 No static caravans, which occurred between 2010 and 2012 and the subsequent residential use (Use Class C3) which has been continuously ongoing in each of the static caravans".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal is one of two¹ LDC appeals made in relation to different uses on different portions of land at Primrose Cottage Farm. Each appeal has a separate decision letter as they relate to different matters but I have looked at the Council's planning history for both applications for each appeal as it is helpful in understanding the development of Primrose Cottage and Primrose Cottage Farm.
3. Both applications were accompanied by numerous appendices. However, not all of these documents were initially submitted with the appeals as the appellant had used a different agent from the applications, who was Sworders in the first instance. In the interests of fairness and so that I could properly review the Council's decision, I asked for copies of the missing documents. Most of these were eventually submitted for my consideration and the Council were kept informed during this process.

Main Issue

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

Reasons

5. The appeal concerns the siting and residential use of 6 static caravans within the extensive grounds of what is now known as Primrose Cottage Farm. The appellant previously occupied Primrose Cottage, a detached bungalow on the site, and the

¹ The other appeal reference number is APP/J1915/X/23/3320915

surrounding land formed, in effect, an agricultural smallholding, now discontinued. The former rectangular site currently has several uses, all of which are accessed from a singular point on High Wych Road.

6. The short access drive into the site divides into an access leading to Primrose Cottage, which has a front and rear garden situated behind a security gate, and then behind a second security gate, the drive roughly follows the northern and south eastern boundary of the site. Five of the caravans are situated in one cluster to the south east of the caravan and motor home storage and rental area occupying the north west corner of the site. The remaining caravan is tucked in between the boundary of the site and the access road, roughly in a line with the cluster of five.
7. All the caravans have a mains water supply and electricity. Gas is provided by external propane gas canisters and foul drainage is connected to two septic tanks situated in the southern portion of Primrose Cottage Farm. The caravans are laid out so that each has their own private entrance through a fence. The cluster of five are enclosed by hedging to separate them from the caravan and motor home storage area to the north, to the south from a large open grassed field and to the east from another cluster of caravans, apparently used for residential purposes. The lone caravan on the other side of the access drive is also enclosed with hedging and fencing such that on entering Primrose Cottage Farm from the second security gate all 6 caravans are not readily apparent. In the forecourt area in front of the second security gate, there is a large, fenced area enclosing refuse and recycling bins for the occupiers of the static caravans, as well as individual mail boxes.
8. Section 191(2) of the Town and Country Planning Act 1990 (the 1990 Act), indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them because, for instance, the time for enforcement action has expired and (b) they do not contravene the requirements of any enforcement notice or breach of condition notice in force. Subsection 191(2)(b) is met here as there is no enforcement notice or breach of condition notice in force. I shall now consider section 191(2)(a).

Siting of the caravans

9. The appellant claims lawfulness in the first instance on the basis that the caravans no longer meet the definition of a caravan as set out in the Caravan Sites and Control of Development Act 1960 as they are no longer mobile. They have become permanent structures by virtue of having fixed utilities and residential curtilages. The time limit for enforcement action would therefore be 4 years as set out in section 171B of the Town and Country Planning Act 1990 (the 1990 Act).
10. Prior to my site visit, the appellant removed the timber skirt from around the base of caravan No 5. At my visit I could see how the caravan was connected to various pipes but also that the wheels were still in place attached to the chassis and the siting of the caravan made use of its corner steadies. I was advised that this was the case with all of the 6 caravans.
11. This is not unlike a static caravan on a holiday park where plots are divided by hedges and planting. Plywood skirts are easily detachable as are the utility connections. The caravans could also be towed away if the means of enclosure were taken down or a crane could be used to lift the units onto a lorry. It has not been shown that the layout of the appellant's cluster, or single caravan, renders

them immobile though their age may prevent this in practical terms. Nevertheless, as a matter of fact and degree, I find they still meet the definition of a caravan and have not become buildings due to either their physical attachment to the land or their time in situ.

12. As such, the 10 year time limit set out in section 171B forms the basis for my consideration of lawfulness and the relevant date is therefore 1 September 2012. It appears there is now no dispute between the parties that the caravans have been on site since at least 15 October 2012, if not before. This is when the Council visited when determining the planning application² to extend the area used for the storage of caravans and motor homes in the north west corner of the site.
13. The officer report on the application states “Adjacent to the larger of the two red outlines and immediately to the south east are between five/six static caravans. During my visit on 15/10/2012, the applicant advised me that these static caravans were being occupied by agricultural workers.” The Council’s Final Comments on the current appeal state “there is evidence that the caravans may have been on site more than 10 years and as such they (the Planning Enforcement Team) are not at this time taking enforcement action on the caravans the subject of this appeal.”
14. Notwithstanding the Council’s Final Comments, the appellant has submitted evidence to show how long the caravans have been in situ. Invoices dated 19 January 2010, 29 March 2010, 28 February 2011 (x2), and 15 March 2012 (x2) provide details of various style 2 x bed and one 3 x bed caravans, with some purchases including siting and levelling. In addition, an invoice dated 16 March 2012 from Jacek Przeslica required payment for the diversion of a foul drain from statics 3 and 4 to a septic tank and the installation of a new foul drain and water supply for two future static homes.
15. The earliest satellite imagery is dated May 2013 and shows the 6 statics in position as they are today. However, 25 archive photographs from Sworders all taken on 7 August 2011³ show statics numbered 1-4 on the Site Survey Plan all in place. The Council query that there are no official addresses for the caravans but the invoices show that each is an individual model and these names can be seen in the photographs. For example, invoice No 3 relates to a Tudor Flamingo caravan and the word “Flamingo” can be seen on the photograph of the unit labelled as static No 3 (S3) on the plan. Invoices for S5 and S6 are dated 15 March 2012 and included siting and levelling.
16. A topographical survey undertaken by Global Surveys for the appellant is dated 22 May 2012 and shows statics 1-4 labelled as “Statics” and S5 and S6 labelled as “Static 5” and “Static 6”. Overall, I am therefore satisfied, on the balance of probabilities, that the caravans have been in place for more than 10 years before the date of the application. I shall now consider their residential use. The appellant needs to show, on the balance of probabilities, that the use of each caravan began more than 10 years before the date of the application and continued without material interruption, for a period of 10 years thereafter.

Residential use of each caravan

Static 1

² Ref: 3/12/1476/FP

³ Details of the images shown behind the information button on each image show they were taken by a Fujifilm Finepix digital camera on 7 August 2011

17. The appellant has provided tables to show all the names of the tenants over the years for each caravan (the tenancy tables (TTs), Appendix 10). Adjacent to the names there are two columns listing the start and end dates for the rentals. The TT for S1 though appears to be incomplete as it does not show the occupancy of RC and LT between 27 July 2017 and 18 October 2017 (signed tenancy agreement provided) and the occupancy dates for SP are left blank even though there is a tenancy agreement provided for the period 10 September 2020 until 9 March 2021.
18. It is apparent then that the TTs should be read with caution and alongside the Sworders Supporting Information document (SSID) dated July 2022, which accompanied the application. This lists the contents of the 28 appendices of evidence and seeks to order it in relation to each caravan. The SSID also explains that the caravans were sold by the appellant to Future Living Sawbridgeworth Ltd (FLSL) in November 2018 and Powerdrama Ltd invoiced FLSL for the land rental between October 2019 and January 2022.
19. The appellant relies on numerous tables which record invoice *numbers* (my emphasis) issued by herself, Powerdrama and FLSL to show the payment of rent and other matters by the tenants. These have columns for the name and address of the tenant, the reason for the issue of the invoice, such as rent or electricity, the amount and the date it was created. Some tables are typed and some are handwritten. In some cases, there are copies of the actual invoices sent to the tenants for payment of rent but there are no bank statements to show the receipt of the rent.
20. The TT lists E as being the first tenant for a month in January 2011 followed by Z and R between February and September 2011 and EDK between December 2011 and November 2014 but there is no corroborating evidence in the form of invoices or invoice number records. There is though a Sylvia Ashley invoice in Appendix 12 for "Rent Static 1" by JM between 27 August and 21 September 2012, which is not shown on the TT. This however only shows occupancy for 1 month.
21. Following on from this, there are Sylvia Ashley invoice numbers (414, 423, 424) to cover the period 1 August 2015 until September 2015 for occupation by FM. However, these all state "B&B for 4 nights Static 1" and "rent 7-10 Sept 15" etc. It has not been shown that FM's occupancy was as a tenant, as opposed to a guest, especially as invoice No 425 (not listed by the appellant but visible on the table) is for "B&B for 4 nights Main House, rent 21-24 Sept 15". It appears FM went home for the weekends which is consistent with a B&B use. Use Class C3 Dwellinghouses does not include hotel and guest house use as they fall within a different use class. This evidence therefore does not assist the appellant's case and merits limited weight.
22. The first tenancy agreement in relation to S1 is for EE and EK for a 12 month period beginning 25 September 2015 with the next one being signed by AB for the period 26 March 2017 until 26 July 2017. In between there is a FLSL invoice number for electricity used by AB. Notwithstanding that there are 2 short tenancy agreements in 2018 and a 6 month one in 2020/2021, with various invoice numbers for rent and utilities in between, it is clear that the appellant has been unable to demonstrate 10 years continuous residential use with corroborating evidence. The appellant states that S1 was registered for Council Tax in 2016 and the Council confirm receipt of payments since then but they are unclear as to which caravan the payments have been made.

Static 2

23. Having regard to the TT and the SSID, it is apparent that there are significant gaps between the tenants during the first few years the caravan was on site. These are about 4 months between DR and JT in 2011, 7 months between Care by Us and KR in 2012 and 3 months between T&I and TW in 2015. Gaps amounting to a month or less I have regarded as insignificant as this is a reasonable change over period for one tenant moving out, for cleaning and repair to take place before the next tenant moves in.
24. In addition, there is no corroborating record to show occupation by the first tenant at the start of 2011 and the nature of the occupation by KR in the latter half of 2012 is unclear as the Powerdrama invoice numbers 625 and 626 list "B&B rental" but do not state where this is taking place and numbers 632, 633, 653 and 654 list "B&B rental static 2". This evidence does not assist the appellant's case and therefore merits limited weight.
25. The invoices between Powerdrama and FLSL also merit less weight with regard to continuous residential use as land rental was payable for the whole area of occupation and may have been due regardless of whether the caravans were occupied or not. This is not clear from the appellant's submissions.

Static 3

26. A B&B use is shown for 2012 by 3 different individuals then there are gaps of between 2, 3 and 4 months over the following years until 2016 when there is a larger gap of 8 months before the occupation by MA and RA.

Static 4

27. It appears there are no invoices or evidence from the tables of invoice numbers to support the occupancy claims between 2 August 2011 and 10 May 2014. Furthermore, there are significant gaps of around 8 and 9 months between 2014 and 2016 according to the TT or longer, having regard to the information in the tables of invoice numbers. For example, there is an 11 month gap between the 30 May 2014 invoice for 2 days occupancy by FP and 3 May 2015 for occupancy by DV. The SSID and TT list occupation by JCA between June 2014 and January 2015 but the Powerdrama invoice numbers in Appendix 16 (numbered 1046, 1079 and 1095) are not before me. In addition, the SSID refers to other Powerdrama invoices in Appendix 16 (Numbered 942, 951, 955, 965 and 972) to support occupancy by LJ between December 2013 to March 2014 but the appendix does not include them.

Static 5

28. The TT lists RM as being the first resident between 28 August 2012 until 31 March 2014. The SSID refers to various Powerdrama invoices in Appendix 16 (Numbered 648, 654, 662, 669, 713, 739, 745). In the column headed "Category (Caravan/Chalet rental, Farm etc)" it records RM as occupying "B&B Static 5" and paying electricity and gas between September 2012 and December 2012. It is not clear whether S5 was being used as part of the B&B business and if so, why invoices were being issued for utilities. The recorded "Category" changes to "Static 5" in February 2013 but again there is no explanation as to why this occurred.

29. Notwithstanding this, there is a significant gap between the occupancy of EDK in 2018 and PD in 2019. According to the TT this is 12 months but having regard to PD's tenancy agreement, which is dated 26 May 2018, this is reduced to less than a month. However, it appears there are no invoices or evidence from the table of invoice numbers to support EDK's occupancy and therefore a significant gap of 5 months remains.

Static 6

30. The TT lists K (probably KM on later documents) as being the first resident on 18 August 2012. However, according to the Powerdrama table of invoices, this may have been on a B&B basis, which does not assist the appellant. The table "Category" column records the invoice for "B&B Static 6" from September 2012 until November 2012 and only changes to "Static 6" in December 2012. Some of the Powerdrama invoice numbers relied on by the appellant to support KM's occupancy are not before me, such as No 200, 849, 854 and 926 and No 837 is a copy of an actual invoice sent to EDK, not KM, dated 17 February 2022. The relevant table of invoice numbers referring to Sylvia Ashley invoices show that invoice numbers 12, 13, 14, 78, 79 and 81 were issued for rent between January 2014 and July 2014.
31. After KM's tenancy, the TT then lists occupation by LG for 1 month in September/October 2014 followed by EDK 23 March 2015 until 30 September 2016. However, there is no evidence from any of the invoice tables to support LG's occupation and the Powerdrama invoice numbers 1301 and 1302 to support EDK's use are not before me, which leaves a significant gap of over 2 years in the claimed chain of 10 years continuous residential use.

Interim conclusion on residential use

32. Having regard to the totality of the evidence, I am not persuaded that the residential use for any of the caravans began more than 10 years before the relevant date and continued without material interruption for a period of 10 years thereafter. This is because the appellant's evidence alone is not sufficiently precise and unambiguous, on the balance of probabilities, to justify the grant of a certificate. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted but the appellant's own evidence appears to be imprecise and with several unexplained discrepancies.

Conclusion

33. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of operational development (the siting of 6 No static caravans) and their continued residential use (Use Class C3) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

D Fleming

INSPECTOR