



Appeal Decision

Site visit made on 1 April 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14 April 2025

Appeal Ref: APP/K0940/X/24/3347478

Priory View Camping & Caravan Site, Sandhall, Ulverston LA12 9EQ

- 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 & Mrs McCann against the decision of Westmorland and Furness Council.
 - The application Ref 2024/0969/LDEX, dated 4 June 2024, was refused by notice dated 3 July 2024.
 - 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 described as use as a residential unit (consisting of a converted building to form residential accommodation and a caravan).
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Decision: the appeal is dismissed

Application for costs

1. An application for costs is made by Mr & Mrs McCann against Westmorland and Furness Council. This application is the subject of a separate Decision

Procedural matters

2. The Council's formal Decision Notice refers to section 192 of the Town and Country Planning Act 1990 (the 1990 Act). This is incorrect as the application was made under section 191 of the 1990 Act as an application for an existing use and not a proposed use in accordance with section 192 of that Act. However, nothing turns on this and I am satisfied that I can consider the application as made under section 191 of the 1990 Act.
3. I have taken the description of the use for which a certificate of lawful use or development is sought from the Council's formal Decision Notice. This description is more precise than that set out on the application form.

Reasons

4. Section 191(4) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For

the avoidance of doubt, this means that the planning merits of the development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development would have been lawful on the date on which the application was made.

5. Section 191(2) of the 1990 Act states that:

For the purposes of this Act 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.*
6. The word 'and' between (a) and (b) in section 191(2) is crucial. The corollary is that a use which may in other circumstances have become immune from enforcement action through the passage of time under section 191(2)(a) could still be caught by the proviso at section 191(2)(b) that the use constitutes a contravention of any of the requirements of any enforcement notice then in force.
7. The reason given in the Council's Decision Notice for refusing the LDC is that the application site is the subject of a 'live' enforcement notice for the residential use of the building such that the use is not lawful: in the language of section 191(2) of the 1990 Act, an enforcement notice then in force. The appellants dispute this and has provided copious evidence to show that the use of the building and caravan combined to form a residential unit has been taking place for in excess of ten years.
8. I have read and understood that evidence. However, by reason of the wording of section 191(2) of the 1990 Act that evidence does not fall to be considered if there was an enforcement notice in force on the date on which the LDC application was made which would prevent the use of the building and caravan combined as a residential unit from being lawful. It is therefore necessary in the first instance to establish if there was an enforcement notice in force on the date on which the LDC application was made.
9. The Council cites an enforcement notice issued on 28 April 1997 by the former South Lakeland District Council (the '1997 Notice'). At that time, the site was known as the Chemical Works, Sandhall, Ulverston. The breach of planning control alleged in the notice was the material change of use from a workshop and office building to a mix use incorporating a residential dwelling. The single requirement was to cease the residential use of the building.
10. The red line to which the enforcement notice related, as depicted on the plan attached to the notice, covered a large area and the whole site. The building in which the alleged material change of use was said to have occurred was not specifically identified on that plan and the position of that building on the site is not described further in the notice.

11. I understand that an appeal was lodged against that enforcement but was dismissed. I also understand that no copy of the Inspector's Decision in that case has been found.
12. The 1997 Notice could potentially relate to any building still on the site that was on the land at the time that notice was issued. However, from my inspection at the site visit, there are only two realistic candidates: a building on the northern boundary of the site (next to which the caravan is stationed), and a 'storage' building located in the south-west corner of the site.
13. The building on the northern boundary of the site is currently being used as a dwelling, in combination with the caravan next to it. From the evidence provided by the appellants, it clearly has been so used for many years. In part, this building is in a poor state of repair. A section of the building has clearly been removed at some point, as evidenced by the broken roof and remaining exposed and free-standing pillar. There is no evidence before me as to when the building was partially demolished.
14. In other parts, this building is in better condition. It has a tiled roof, and has been rendered externally. Internally, this building provides all of the facilities required for day-to-day domestic existence (although the building is not currently used to provide sleeping facilities, there would be space to do so if the current layout was revised). It is also located close to the vehicular entrance to site, which would be a logical position for a building previously used for a mixed which included an office and a dwelling.
15. The 'storage' building located in the south-west corner of the site is larger than the building on the northern boundary, albeit some of the building as now existing is in the form of later additions. The size of the building is more commensurate with a workshop and office, that being the use cited in the 1997 notice as being the use from which the material change of use occurred.
16. The 'original' parts of this building are in a state of disrepair. Even allowing for the passage of time since 1997, I have great difficulty in envisaging how this building could have been used as a dwelling, in terms of being watertight and weatherproof. The elongated rectangular shape of the 'original' building also does not readily lend itself to use as a dwelling.
17. I note that in November 1997 (i.e. some six months after the 1997 Notice was issued) planning permission was granted for the refurbishment of the existing office/workshop building (Council Ref: 59722165). It is reasonable to conclude that this was the same building to which the 1997 Notice was subject. There is no evidence whatsoever of the building in the south-west corner of the site having been refurbished. By contrast, the building on the northern boundary shows some evidence (for example, external rendering) of having work done to it, albeit I fully recognise that there is no documentary evidence to support this.
18. Balancing all these factors, I am inclined to the view that, on the balance of probability, it was the building located on the northern boundary of the site that was the target of the 1997 Notice. In reaching that conclusion, I am mindful that this building was clearly much larger in the past than it is now. The larger size of the building as previously existing is more in keeping with the use of a workshop and office than the building as it now exists, and in that form fits with the description of the building in the 1997 Notice.

19. It is unfortunate that no record of the 1997 Notice exists beyond the notice itself and plan attached to it. Nevertheless, with a LDC application/appeal the burden is squarely upon the applicant/appellant to show, on the balance of probability, that the development would have been lawful on the date on which the application was made. The appellants in this case clearly have a long-standing association with the appeal site. Nonetheless, the appellants have not been able to show through evidence that the 1997 Notice did not relate to the building now used as a dwelling in combination with the caravan.
20. The provision at section 191(2)(b) of the 1990 Act relates to the contravention of any of the requirements of any enforcement notice then in force. The requirement in the 1997 Notice is to cease the residential use of the building. The use for which a certificate of lawful use or development is sought is the use as a residential unit, consisting of a converted building to form residential accommodation and a caravan. The residential use of the existing building is caught by the sole requirement of the 1997 Notice. It follows that none of the use for which the LDC is sought would be lawful, given that the residential use for which the LDC sought is a combination of the use of both the building and the caravan.
21. I have considered whether I could exercise the power under section 191(4) of the 1990 Act to modify the description of the existing use to relate only to the caravan. However, based on the evidence that is before me (including my site visit), I am not convinced that as a matter of fact and degree the caravan in isolation provides all the facilities necessary for day-to-day domestic existence. In no small part, this is because much of the evidence that has been submitted relates to the use of the building and caravan combined or to the appeal site as a whole. I have therefore not been able to separate the evidence relating to the use of the building from that relating to just the use of the caravan. Consequently, on the balance of probability, I am not able to determine whether the stationing and occupation of just the caravan in isolation as a 'residential unit' would have been lawful on the date on which the LDC application was submitted. It is therefore not open to me to exercise the power under section 191(4) of the 1990 Act to modify the description of the existing use.

Conclusion

22. 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 as a residential unit (consisting of a converted building to form residential accommodation and a caravan) at Priory View Camping & Caravan Site, Sandhall, Ulverston LA12 9EQ is 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.

Formal Decision

23. The appeal is dismissed.

Paul Freer
INSPECTOR