



Appeal Decision

No site visit

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2025

Appeal Ref: APP/H2733/X/23/3327048

Jasmine Lodge, Sands Road, Reighton Gap, Filey YO14 9SR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Miss Kirsty Pringle against the decision of Scarborough Borough Council.
 - The application ref 23/00301/CLE, dated 16 February 2023, was refused by notice dated 10 May 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 for the existing use of building named ‘Jasmine Lodge’ as a dwelling house (C3 use).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. My decision rests on the facts of the case and the interpretation of relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant. For these reasons, a site visit to the property was not necessary as it would not assist my assessment of the evidence.
3. The siting of a caravan comprises a use of land for the purpose to which the caravan is put. An LDC was granted on 6 September 2013 for the use of a caravan as holiday accommodation by friends and family of the occupiers of the dwelling known as ‘Wild Waves’. I shall refer to this as the 2013 LDC.
4. The current appeal seeks an LDC for the existing use of the site as a dwellinghouse (Use Class C3)¹. Paragraph 3.1 of the appellant’s Statement of Evidence refers to the 2013 LDC and states “*The caravan however has never been used for holiday accommodation and has been in use as a dwelling. The following evidence sets out the use as a dwelling for over a period of 4 years.*”
5. Furthermore, one of the Council’s reasons for refusing to grant the LDC states “*...insufficient evidence [has been] provided to justify a continuous 10 years use of a caravan for residential use...*”.
6. The appellant’s evidence states there is a caravan on the land and the Council has clearly determined the application on the basis that a caravan is stationed on the land. The appellant’s final comments refer to the separation of the two properties, Wild Waves and Jasmine Lodge, as the justification for applying the 4-year immunity period, not that there is a building on the land.

¹ Paragraph 1.6 of the appellant’s Statement of Evidence

7. A caravan is not a building for the purposes of the Town and Country Planning (Use Classes) Order 1987 (as amended). No evidence is provided to show that the caravan stationed on the land has been extended, altered or adapted to make it a building. In the absence of such evidence, an LDC could not be issued for what has been applied for, namely the existing use of a building named 'Jasmine Lodge' as a dwelling house (C3 use).
8. Section 191(4) of the 1990 Act provides for me to modify or substitute the description of development to which the application relates, if I am provided with information to satisfy me of the lawfulness of the use at the time of the application. The evidence provided by both main appeal parties addresses the use of the land for the stationing of a caravan for permanent residential purposes. I shall therefore proceed based on whether the information provided shows that the use of the land for the stationing of a caravan for permanent residential purposes is lawful.
9. Section 171B of the 1990 Act provides the time limits after which immunity from enforcement action would be achieved. The four-year period only applies where there has been a material change in the use of a pre-existing building to a dwelling. As already established, Jasmine Lodge is not a building, it is a caravan. The relevant time period to apply in this case is therefore the 10-year period confirmed in s171B.(3).

Main Issue

10. The main issue is whether the Council's refusal to issue an LDC is well founded. This turns on whether the appellant can show that the use of the land for the stationing of a caravan for permanent residential purposes was lawful on the date the application was made. The onus of proof is on the appellant to show, on the balance of probability, that the use to which the LDC is applied for began 10 or more years before the application was made, and that the use has continued throughout that period without significant interruption. The claimed use would have to be shown to have commenced on or before the 16 February 2013, the material date.

The Evidence

11. The appellant's Statutory Declaration ("KPSD") states that the land edged red on drawing number KP002, dated 5 April 2022, has been used as garden/curtilage for Jasmine Lodge since Wild Waves was sold on 7 March 2014. It also confirms that Jasmine Lodge has been used as a separate and independent dwelling for a continuous period since the sale of Wild Waves. Prior to the sale of Wild Waves, the appellant confirms that the land occupied by Jasmine Lodge formed the extended garden of Wild Waves. It also states that the appellant does not live at Jasmine Lodge, their residence being an address in the Doncaster area.
12. While KPSD does not contain information as to the appellant's connection to the land, the application form confirms they own the land, and presumably the caravan. The evidence also refers to the land, and caravan, being retained by the former occupier's family.
13. The content of the Statutory Declaration provided by Paul Curnow repeats exactly what the appellant has said in respect of the land. However, it also states that they live at a different address in the Doncaster area to the appellant. No information is provided as to Mr Curnow's connection to the land.

14. Aerial images of the land and surrounding area are provided, which are annotated 2002 and 2018/present day. The 2002 image claims to show Jasmine Lodge within the curtilage of Wild Waves. The image annotated 2018/present day is claimed to show the boundaries separating Jasmine Lodge from the adjacent Wild Waves.
15. Several Council Tax bills have been provided. These show that payments were sought for Jasmine Lodge in 2014/2015, 2015/2016, 2019/2020, 2020/2021, 2021/2022 and 2022/2023. Several other pieces of correspondence relating to Council Tax have also been provided, including one dated 2017.
16. The Council's Delegated Planning Report identifies that the 2013 LDC followed a refusal of planning permission for the siting of a mobile home in the garden of Wild Waves. The Council understands that Wild Waves was then sold, and the former owner lived permanently at Jasmine Lodge from May 2014 until July 2020.
17. The Council accepts that Jasmine Lodge was occupied for permanent residential purposes throughout this 6+ year period. However, following the death of the former owner/occupier of Jasmine Lodge the Council claims the caravan has only been occupied intermittently for holiday purposes. The Council's version of events is corroborated by the current owner of Wild Waves.

Assessment of the Evidence

18. The Council does not dispute that Wild Waves was sold independently of the land occupied as Jasmine Lodge on 7 March 2014. In the absence of any evidence to show that the land occupied by Jasmine Lodge was separated from Wild Waves at some date before the sale occurred, it is reasonable to conclude that 7 March 2014 was the date at which the caravan known as Jasmine Lodge began being used as a separate, independent residential unit.
19. The subdivision of the former single planning unit into two physically and functionally separate residential units would constitute a material change in the use of the land. The date that the planning unit was divided is however after 16 February 2013. As such, the sale of Wild Waves does not show that the use of the land for the stationing of a caravan for permanent residential purposes began 10 or more years ago.
20. The aerial image annotated 2002 shows a white rectangle edged red. While this structure has the appearance of a caravan, it is noticeably smaller and positioned differently than the mobile home that is edged red in the 2018/present day image. While changing a caravan for a mobile home need not necessarily affect the use of the land, no explanation is offered for this potential change in circumstance.
21. Furthermore, the 2002 image does nothing more than show a white rectangle in the garden of Wild Waves. Even if I were to accept the white rectangle is a caravan, it does not show how the caravan is occupied at the time the image was taken. While 2002 is before the material date, this image does not constitute precise and unambiguous evidence to support the purpose for which the LDC is sought.
22. The 2018/present day image shows that boundaries have been provided between Jasmine Lodge and Wild Waves by the time the image was taken. This is however

after the sale of Wild Waves, so at most, it goes someway to corroborate that the properties were separated from one another at the time Wild Waves was sold.

23. Council Tax correspondence only shows that Jasmine Lodge was registered for residential occupation, not that it was occupied for permanent residential purposes. However, even if I were to accept that it did, the documents provided do not go back as far as the material date. They therefore fail to show the use has occurred for 10 years or more.
24. Regardless of whether the caravan was occupied permanently or as holiday accommodation, Council Tax would have been payable. However, to establish the permanent residential occupation of the caravan is lawful, the appellant needs to show that it was occupied permanently for a period of 10 years or more. The evidence shows the former owner of Wild Waves only occupied the caravan on a permanent residential basis for 6+ years.
25. The subsequent intermittent residential use of the caravan for holiday purposes by the former occupier's family would represent a material change in the character of the caravan's use. This constitutes a material change in the use of the land and is therefore a new use that would also need to be demonstrated to have occurred for 10 or more years. The evidence shows it to have occurred for less than 3 years. The use of the land for the stationing of a caravan for residential holiday purposes has also not been shown to be lawful.
26. From the evidence before me, it is more likely than not, that the original planning unit occupied by Wild Waves and an ancillary caravan was subdivided to form two physically and functionally separate planning units by 7 March 2014. This date is after the material date. While the two separate planning units may have been created before 7 March 2014, there is no precise and unambiguous evidence to show that to be the case.
27. The appellant has therefore failed to demonstrate, on the balance of probabilities, that the use of the land for the stationing of a caravan for permanent residential purposes occurred on or before 16 February 2013, or that such a use has continued to occur without significant interruption for 10 or more years.

The Enforcement Notice

28. The Council issued an enforcement notice ("the notice") in respect of the unauthorised use of the appeal site for the residential occupation of a caravan on 1 November 2022. The notice required the unauthorised use of the land to cease and the caravan to be removed from the land and gave a compliance period of 3 months from the date the notice took effect. The notice was not appealed and therefore remains in force.
29. Section 191(2) confirms that uses and operations are lawful at any time if "*(b) it does not constitute a contravention of any requirements of any enforcement notice...then in force.*" Even if I had found that the use of land for the stationing of a caravan for permanent residential purposes had occurred for 10 or more years, an LDC could not be granted as it would be in contravention of the notice that is in force.

Conclusion

30. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use of land for the stationing of a caravan for permanent residential purposes 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).

M Madge

INSPECTOR