The Planning Inspectorate

Appeal Decision

Site visit made on 19 August 2021

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 August 2021

Appeal Ref: APP/A2525/X/21/3272344
Caravan A4, Fields Farm, Bridge Road, Sutton Bridge, Spalding, PE12 9SN

- 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 Syd Smith against the decision of South Holland District Council.
- The application Ref H18-0918-20, dated 14 October 2020, was refused by notice dated 11 February 2021.
- The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
- The matter for which a certificate of lawful use or development is sought is described in the application as "an existing use", namely "permanent residential use of a caravan."

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the matter constituting failure to comply with conditions which is considered to be lawful.

Procedural, background and preliminary matters

2. A site visit was not strictly necessary, as my decision is based on evidence of the history of the use of the site. However, I was visiting the area in connection with another appeal and therefore viewed this site unaccompanied, from the adjoining track. I did not enter the site itself but saw the site context and the caravans on it.

3. Notwithstanding the terms of the application referred to in the heading of this decision, it is apparent from the 'Planning Statement' submitted with it that an LDC is sought to certify that the failure to comply with conditions is lawful. That is the basis upon which the Council determined the application and responded to the appeal.

4. In March 1999, planning permission Ref H18-1219-98 was granted for the use of the overall site as a site for caravans for seasonal workers and its retention out of season for storage of caravans. That permission was subject to:

> Condition 1 - "The caravans shall only be used for accommodation outside the period of 1st December to 5th April in the following year and that accommodation shall only be used for seasonal workers employed in farming operations on land in the same occupation."

5. Following the refusal of application Ref H18-0691-03, made under section 73A of the 1990 Act, an appeal was allowed in October 2004 (the 2004 permission)

to continue the use without complying with condition 1 of permission Ref H18-1219-98, but subject to:

> Condition 1 – "The caravans shall only be used for accommodation for seasonal workers employed in farming under the Seasonal Agricultural Workers Scheme (SAWS), or any successor scheme, and such persons shall only work on land in the same ownership or occupation"; and
>
> Condition 2 – "No person shall occupy any of the caravans for more than six months in any period of one year."

6. When the SAWS scheme ended, a further section 73A application Ref H18-0224-18 was made to regularise the position. This was granted in May 2019 (the 2019 permission), subject to:

> Condition 2 – "The caravans shall only be used for accommodation for agricultural and/or horticultural workers employed in farming by Hargreaves Plants, and such persons shall only work on land in the same ownership or occupation."

That permission did not remove condition 2 of the 2004 permission, which restricted occupation to no more than 6 months in any period of 1 year.

7. The appellant purchased the site from Hargreaves Plants Ltd in June 2020.

8. Section 191(4) of the 1990 Act permits the modification of the matter described in the application. Having regard to all the above, the matter should be described as:

> "The permanent residential occupation of caravan A4, being a caravan sited in the location edged red on the application plan, by a person other than an agricultural worker employed in farming by the owners or occupiers of the land in breach of conditions 1 and 2 of the planning permission granted under Ref H18-0691-03 and condition 2 of the planning permission granted under Ref H18-0224-18."

9. Whilst the wording of condition 2 of the 2019 permission differed from that of condition 2 of the 2004 permission, the substance of the restriction remained the same, and the appellant's case is that this substantive restriction has been breached for the requisite period.

Main Issue

10. The main issue is whether the Council's refusal of an LDC is well-founded. This will turn on whether the appellant has proved on the balance of probability that the caravan has been in permanent residential occupation by a person other than an agricultural worker employed in farming by the owners or occupiers of the land without significant interruption, for any period of 10 years prior to 14 October 2010[1].

Reasons

11. My assessment of the evidence is made in the context of advice in the Planning Practice Guidance that:

[1] This is the date of the LDC application.

"…if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

The word "sufficiently" is important. When dealing with events over several years, it may be unrealistic to expect absolute precision and a complete absence of any ambiguity.

12. A Statutory Declaration (SD) dated 24 September 2020 from Mr Charles Leonard has been submitted. The key points in that SD are that:

- he has lived in caravan A4 continuously since 8 August 2008;
- he paid a monthly rent to Hargreaves Plant Ltd and then to the appellant when he purchased the site in 2020;
- throughout his occupation, he has not been employed by either Hargreaves Plant Ltd or the appellant; and
- he knows Mr Giles and Mr Rooney, who have occupied other caravans on the site continuously since October 2009 and August 2020 respectively.

13. SDs from Mr Giles and Mr Rooney, dated 23 September 2020, confirm that Mr Leonard was already living in caravan A4 when they moved in, and that he remained living in it continuously up to and including the date of their SDs.

14. Though not exhibited to Mr Leonard's SD, a copy of a short rental agreement has also been submitted. This is for his tenancy of caravan A4 *"commencing on (date) 8-8-08 and ending on (date) N/A at a rental of £180 per month."* There is also a single "rent collection form" dated 6 September 2008 recording the collection of one payment of £45 from "Charlie" for caravan A4, along with a rent book extract covering the period 7 February 2009 to 20 February 2010.

15. In addition, there is a separate form signed by Mr Leonard on 8 August 2008 confirming he had read and understood Hargreaves Plants Ltd's rules and regulations for the caravan camp site, and that the fire safety procedures had been explained and understood.

16. Finally, there is a written statement from Emma Garner. She says she was the Office Administrator for Hargreaves Plants Ltd from 2001 until 2019, when the company went into administration and throughout her employment, Mr Leonard was never employed by Hargreaves Plants Ltd. The statement begins, *"I…Do solemnly and sincerely declare…"* and ends, *"I hereby…confirm that to the best of my knowledge the above is a true and accurate statement."* However, this statement is not witnessed by a person authorised to administer oaths and it does not therefore carry the weight of a SD. Nevertheless, though Ms Garner's statement does not confirm any details of Mr Leonard's occupation of the caravan, it corroborates one important element of his evidence, and I attach significant weight to it.

17. More extensive and recent records of rental payments was requested by the Council and would have been helpful. I do not know why they were not provided, but the absence of such corroborating details does not render Mr Leonard's own sworn evidence imprecise or ambiguous.

18. Mr Leonard could be subject to prosecution and a serious penalty if his statement were shown to be false in a material particular. In addition, any LDC based on such false evidence could be overturned. Accordingly, I attach substantial weight to Mr Leonard's SD. Furthermore, his sworn evidence is corroborated by 2 other sworn statements from people equally liable to prosecution.

19. The other documentary evidence referred to above is limited, but it all corroborates Mr Leonard's SD to some extent. Against this, apart from a concern about the absence of greater detail, the Council notes that documents accessed at Companies House relating to the administration of Hargreaves Plants Ltd state that the administrators were exploring selling all the caravans on the site in September 2019 and February 2020, but no reference is made to any persons still occupying the caravans. Without more detail, that is insufficient to displace the sworn and unsworn evidence before me, or to make the appellant's version of events less than probable.

20. I am satisfied that the appellant's evidence is sufficiently precise and unambiguous, and it is not seriously contradicted by other evidence. The appellant has proved on the balance of probability that the caravan has been in permanent residential occupation by a person other than an agricultural worker employed in farming by the owners or occupiers of the land without significant interruption, for a period of more than 10 years prior to 14 October 2010.

Conclusion

21. 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 was not well-founded and that the appeal should succeed. This was in respect of the permanent residential occupation of caravan A4, being a caravan sited in the location edged red on the application plan, by a person other than an agricultural worker employed in farming by the owners or occupiers of the land in breach of conditions 1 and 2 of the planning permission granted under Ref H18-0691-03 and condition 2 of the planning permission granted under Ref H18-0224-18.

22. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

J A Murray

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 October 2020 the matter described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The caravan has been in permanent residential occupation by a person other than an agricultural worker employed in farming by the owners or occupiers of the land without significant interruption, for a period of more than 10 years prior to 14 October 2010.

Signed

J A Murray
Inspector

Date 27 August 2021
Reference: APP/A2525/X/21/3272344

First Schedule

The permanent residential occupation of caravan A4, being a caravan sited in the location edged red on the plan attached to this certificate, by a person other than an agricultural worker employed in farming by the owners or occupiers of the land in breach of conditions 1 and 2 of the planning permission granted under Ref H18-0691-03 and condition 2 of the planning permission granted under Ref H18-0224-18.

Second Schedule

Land at Caravan A4, Fields Farm, Bridge Road, Sutton Bridge, Spalding, PE12 9SN

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the matter described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

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Plan

This is the plan referred to in the Lawful Development Certificate dated:27 August 2021

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Scale: DO NOT SCALE

