
Appeal Decision

Site visit made on 18 November 2013

by Martin Joyce DipTP MRTPI

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

Decision date: 12 December 2013

Appeal Ref: APP/E2001/X/13/2196915

The Caravan, Willow Garth, Owstwick Road, Danthorpe, Hull HU12 9AE

- 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 and Mrs Garbutt against the decision of the East Riding of Yorkshire Council.
- The application, Ref: DC/12/04503/CLE/EASTSE, dated 2 November 2012, was refused by notice dated 18 March 2013.
- 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 the use of land as a caravan site (single caravan).

Summary of Decision: The appeal is allowed and a Certificate of Lawful Use or Development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

1. The application plan submitted by the appellants shows only the actual site of the caravan for which a Certificate of Lawful Existing Use or Development (CLEUD) is sought. I therefore requested information about the wider planning unit with a view to determining whether any Certificate that might be granted should relate to a wider area of land. I am satisfied from the responses received, however, that the current planning unit, which includes a pond or lake to the east of the caravan, has not been in use as a caravan site for at least ten years, thus it could not be included in any Certificate that may be issued.

Background

2. The appellants own and occupy a twin-unit caravan sited on land to the south-west of Willow Garth, a bungalow located in open countryside which was their former residence. There is no dispute between the parties that a single caravan was sited in the same location, and used for human habitation, from about 1997 until March or April 2004. It was occupied by a tenant of the appellants who used an adjacent workshop building that he also rented from them. Upon cessation of his use of that building the caravan was removed from the site, but the appellants sought the advice of the Council as to the legitimacy of a continuation of the use of the land for the siting of a caravan for their own occupation. They were told that no action could be taken against

such use, as it had been taking place for more than four years¹. As they wished to site a twin-unit caravan on the land, works were undertaken to extend the concrete hardstanding, and the new caravan was sited on the land in October 2004, utilising the existing water, sewerage and electricity connections. An LPG connection was subsequently installed, together with the siting of storage tanks which are still in position. The caravan has been occupied by the appellants since that date, including at the date of my inspection. I was informed that their son and his family live in Willow Garth.

Main Issue

3. The main issue that arises in this appeal is whether the break in the continuity of the siting of a residential caravan on the land, between March/April 2004 and October 2004 prevents the issue of a Certificate of Lawful Existing Use or Development (CLEUD) having regard to relevant case law and the particular circumstances relating to this application and appeal.

Reasoning

4. Section 191(2)(a) of the Town and Country Planning Act 1990 (the Act) provides that uses and operations are lawful at any time if either no enforcement action may be taken in respect of them, because they did not require planning permission or because the time for enforcement action has expired, or they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The latter does not apply, and there is no dispute that planning permission would normally be required for the use of land as a caravan site. The time limit relating to when enforcement action may be taken in respect of an unauthorised use of land is set out in Section 171B(3) of the Act and is ten years. The appellants need to show, therefore, that, on the balance of probabilities, the unauthorised use of the appeal site as a caravan site² for a single caravan has been taking place for at least ten years preceding the date of their application for a CLEUD, that is from before at least 2 November 2002. The appellants are aware that the burden of proof in an appeal of this nature lies with them.
5. There is no dispute that a caravan occupied for residential purposes was sited on the land in question before 2 November 2002, and that the use continued until March or April 2004, when that caravan was removed. The appellants' case is that this use then continued, albeit that another caravan was not brought onto the land until about six months later, in October 2004. There was, however, no intervening use of the land, neither was the use abandoned or physical works undertaken which were incompatible with the continuation of the use. Indeed, work was undertaken to prepare the site for a larger twin-unit caravan during this period.
6. In support of these arguments reliance is placed upon several items of case law relating to the question of abandonment, although none of these cases relate specifically to the use of land as a caravan site, thus they are not directly applicable. In any event, the Council do not seem to me to be claiming that

¹ This advice was erroneous. I deal with it further in paragraphs 4 and 11.

² The expression "caravan site" means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed having regard to Sections 1(4) and 29(1) of the Caravan Sites and Control of Development Act 1960, as confirmed in Section 336(1) of the Town and Country Planning Act 1990.

the use was abandoned, rather that there was a break in the continuity of the use which amounted to the cessation of the original unauthorised use of the land as a caravan site and then a subsequent re-commencement of that use which is unlawful as it has not been taking place for the required ten years. Therefore, having regard to *Thurrock*³ and *Swale*⁴, the use was not active throughout the required ten-year period and the Council would have been unable to take enforcement action during the six or seven months when a caravan was not on the land, between March/April and October 2004 as there was no breach then taking place. They contend that any visit to the site during this period would not have shown any evidence of the use, only an area of hardstanding on the land, thus this break in the continuity of the use means that a CLEUD cannot be granted.

7. In considering these matters I note that the Council do not dispute the appellants' contentions in respect of the chronology of events at the appeal site, notwithstanding the limited amount of documentation that has been provided to support either the appeal or the application for a CLEUD. The appeal turns, therefore, on the interpretation of relevant case law, and the particular facts of this appeal.
8. The Council's case centres on the gap of six or seven months in 2004 and the findings in *Thurrock* and *Swale* which confirm that a breach of planning control has to be continuous and active to gain immunity from enforcement action. In this context, it is apparent that they contend that, had a visit been made to the appeal site in the period when there was no caravan on the site, they could not have taken enforcement action as there would have been no breach of control visible.
9. I do not, however, find this argument to be entirely satisfactory in the circumstances of this appeal for a number of reasons. It is clear that advice was sought from the Council about the possibility of siting another caravan on the appeal site when the earlier one, in place since about 1997, was removed. It appears, from a handwritten note supplied by Mrs Garbutt, that an officer with the Council had advised the appellants in a telephone conversation, albeit erroneously, that a new caravan could be placed on the site without planning permission as the earlier caravan had been in place for more than four years, thus the use was therefore immune from enforcement action. Advice was also given that Council Tax would need to be paid, but there was no suggestion that the use was not immune from enforcement action, and evidence has been provided that Council Tax on the twin-unit caravan was paid from 1 October 2004.
10. A telephone conversation cannot, of course, commit the Council in any way and the proper course of action would have been to submit an application for a CLEUD at that time but this was not done, although I note, from the Council's statement, that an application for a Lawful Development Certificate was made in 2005⁵, albeit that this was never determined. Furthermore, the Council do not dispute that the appellants kept them informed as to action on the site, which included the provision of an increased area of hardstanding, and the subsequent siting of a twin-unit caravan. The fact that the Council were aware

³ *Secretary of State for the Environment, Transport and the Regions v Thurrock Borough Council* [2002] EWCA Civ 226.

⁴ *Swale Borough Council v First Secretary of State* [2005] EWCA Civ 1568.

⁵ Application Ref: 05/06592/CLE for a certificate of lawfulness for existing use of caravan as dwelling.

of the situation at the site, and of the intentions of the appellants in respect of alteration of the land in order to site a larger caravan has to be set against any claim that a site visit would not have shown evidence of a continuing use.

11. Further evidence of the Council's awareness of the situation at the appeal site is given in a letter dated 23 October 2006, sent by the Council's Development Control Team Leader to the appellants' agents at that time, Frank Hill & Son. This relates to a planning application submitted in August 2005 to retain the existing caravan on the site, and for the use of an adjacent pond as a fishing lake for partially sighted and disabled persons. In that letter the previous erroneous advice that four years breach of control was sufficient to establish a lawful use was acknowledged, and corrected. It was also suggested that it may not be possible to show the correct period of ten years' use, although no indication is given that this refers to any break in the use, rather the letter may be read as saying that, at the date of writing, only nine years' use could be shown given the writer's belief that the use had started in October 1997. In relation to the current appeal the significance of the letter is that it confirms the Council's knowledge of both the history of the site and the intentions of the appellants.
12. In any situation where land is being used as a caravan site there is likely to be a time when one caravan is replaced by another, given that caravans have a limited life, and often require updating and replacement due to the effect of weather or other external elements. A caravan site may not, therefore, actually have a caravan on a particular pitch for a period of time during such replacement and it is a matter of fact and degree as to whether the absence of a caravan during that period results in the cessation of the use. In this case, a period of six or seven months may initially seem to indicate that the use had ceased but I am satisfied that it was within the Council's knowledge that this was not the case, and that physical alterations were to be, and were, made to accommodate a larger caravan, ordered from manufacturers in York, in order that the use could continue.
13. In all of the above circumstances, I am of the view that the period during which there was no actual caravan on the land was of no significance in the overall history of the use. Moreover, had the Council undertaken the hypothetical site inspection during the period from March or April to October 2004 they would have seen evidence of that use in the hardstanding, both in its original form and either during extension or in completed widened form, as well as the service connections that remained on the site for use in association with the new caravan. They were fully aware of the appellants' intentions in all of these matters, and it follows that there was no interruption to the use which began in 1997 and continues up to and beyond the date of the appellants' application for a CLEUD.

Conclusions

14. 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 the use of the land as a caravan site for a single caravan was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under Section 195(2) of the 1990 Act as amended.

Other Matters

15. All other matters raised in the written representations have been taken into account, but they do not outweigh the conclusions reached on the main issues of this appeal.

FORMAL DECISION

16. The appeal is allowed and attached to this decision is a Certificate of Lawful Use or Development describing the existing use which is considered to be lawful.

Martin Joyce

INSPECTOR

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 2 November 2012 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red and hatched black 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 use has been undertaken continuously for a period of more than ten years preceding the date of the application.

Signed

Martin Joyce

Inspector

Date: 12 December 2013

Reference: APP/E2001/X/13/2196915

First Schedule

The use of the land as a caravan site (single caravan)

Second Schedule

Land at The Caravan, Willow Garth, Owstwick Road, Danthorpe, Hull HU12 9AE

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 use 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 December 2013

by Martin Joyce DipTP MRTPI

Land at The Caravan, Willow Garth, Owstwick Road, Danthorpe, Hull HU12 9AE:

Reference: APP/E2001/X/13/2196915

Scale: Not to scale

