



Appeal Decisions

Inquiry held on 1, 2 and 15 February 2024

Site visit made on 31 January 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27TH MARCH 2024

Appeal A Ref: APP/Z1510/C/23/3328254

55 Sportsman Lane, Hatfield Peverel, CM3 2NP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Wayne Stanley against an enforcement notice issued by Braintree District Council.
 - The notice was issued on 26 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land by the unauthorised residential occupation of a mobile home.
 - The requirement of the notice is to cease the use of the land for residential purposes.
 - The period for compliance with the requirement is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f), and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/Z1510/X/23/3328256

55 Sportsman Lane, Hatfield Peverel, Essex, CM3 2NP

- 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 Mr Wayne Stanley against the decision of Braintree District Council.
 - The application ref 20/01205/ELD, dated 26 June 2020, was refused by notice dated 5 October 2021.
 - 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 siting of caravan for human habitation including incidental domestic use of the land and associated buildings.
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Decisions

Appeal A

1. The appeal is allowed and the enforcement notice is quashed.

Appeal B

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

3. The description of the development is not the same in the notice and in the LDC application.

4. The notice (Appeal A) alleges “the material change of use of the land by the unauthorised residential occupation of a mobile home.” The appellant meets the definition of gypsy or traveller in the Planning Policy for Traveller Sites, and has confirmed that he seeks planning permission for a single pitch gypsy and traveller site under the ground (a) appeal.
5. The description of the development in the LDC appeal (Appeal B) is “the siting of caravan for human habitation including incidental domestic use of the land and associated buildings.”

Appeal A - Ground (d), and Appeal B

6. The issue in ground (d) of Appeal A is whether that at the date when the notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control. The main issue in Appeal B is whether the Council’s decision to refuse to grant the LDC was well-founded.
7. The evidence regarding the history and use of the site is relevant in each appeal, and the appeal land is the same. It is for the appellant to prove his case on the balance of probabilities in both cases.
8. As caravans are not buildings they do not constitute operational development. It is therefore the use of the caravans and wider site which must be considered, and in particular whether there has been a material change of use which is not immune from enforcement action. Agricultural use is excluded from the definition of development under section 55 of the TCPA 1990.
9. The Council’s case is that the established residential use was abandoned and cannot be lawfully started again by the appellant. If abandonment has occurred there is no planning use for the site.

The Evidence

10. Much of the evidence provided regarding the use of the land before the appellant was given by Nicola Coppin who gave evidence under general affirmation. She had provided three written submissions in advance, and there was a signed letter from her brother Jason Coppin which confirmed that he agreed with what she had said. However, this was not sworn evidence and must therefore be accorded less weight. Craig Lindsell also attended the inquiry and was cross-examined on his sworn evidence. There were various other written statements provided by the appellant but as these were unsigned and the witnesses did not attend the inquiry I have disregarded them in this determination.
11. The parties agree about the historic use of the site. It is not contested that there had been a mobile home and touring caravan on the land since the 1950s, and which was lived on permanently by Stella and Alfred Coppin until they passed away in the mid-1990s. They raised their family on the site and used it as a small-holding with chickens, ducks, rabbits and vegetables. There was not much evidence regarding the type or extent of this use but it was not in dispute.
12. Nicole and Jason Coppin, who sold the site to the appellant, visited to stay with their grandparents when they were children. They continued to do so following the death of their grandparents, and the subsequent death of their father in 2005 (by which point they had already become the owners of the land). Ms

Coppin readily accepted that since she had owned the site no-one had lived permanently on it in the caravans, or that she ever had any intention of living on it in a caravan as her main residence. Ms Coppin gave evidence regarding regular recreational visits to the site by herself, but more frequently by her father and brother who she said stayed there between two and three times a month.

13. The destruction of the mobile home by fire happened in around late 2005/early 2006 and the site was also removed from Council Tax at that time. Ms Coppin stated that following this her brother still continued to stay at the site regularly, probably every three weeks or so on average, and she would go three or four times a year. During this time they stayed in the touring caravan and purposefully maintained the garage, the WC shed and the large shed. The greenhouse and some other structures related to the smallholding were removed or not maintained.
14. A Council officer visited the site in 2006 and noted that it was "derelict" and "completely overgrown". The subsequent delegated report states "At present 2 derelict sheds and a derelict caravan exist to the north east of the site. The site is very overgrown with self-seeded trees and shrubs and does not appear to have been occupied for a number of years."
15. The Council provided some photographs and stills from a video taken in 2016 and from 2018 which show the touring caravan in a state of general disrepair with the door removed. The land also looks unkempt and overgrown although it is not possible to see the whole site. The inside of the caravan as shown in the 2016 images is not habitable. It has rubbish and debris on the floor and is in a generally run-down, dirty and dilapidated state. Ms Coppin accepts that those images are an accurate record and says that that was a result of no-one having been there for several years by this point and an example of the vandalism that occurred.
16. Mr Lindsell, who had visited the site regularly between 1987 and 2018 for the purpose of rabbiting, was able to provide evidence regarding the nature and maintenance of the land. Mr Lindsell did not always see anyone else on the land when he visited but he did often see evidence of maintenance or that people had been there (such as debris and rubbish). He had looked through the windows of the touring caravan from time to time, the last time being around 2012/13 and it appeared clean and tidy inside. This was notwithstanding that the outside looked "dishevelled" by which he meant worn and with the paint peeling off. He said that in 2012/2013, the outside of the caravan looked the same as in the images provided by the Council from 2016 but with the door attached. He said that the images he was shown from 2016 and 2018 overall was not what he had seen on 2012/13 and gave a different impression.
17. Around 2006, following the increased vandalism of the site and due to family circumstances, Ms Coppin had hoped that she would be able to obtain planning permission for a dwellinghouse on the site for the family. However, this was not possible and they eventually took the decision to sell the land although this did take several years due to the emotional attachment and family connection that they had to it. Ms Coppin and her brother submitted a second planning application for a dwellinghouse in 2018 so that they were able to be certain of its value prior to the sale, and this is perfectly understandable.

18. The appellant purchased the site from Nicola and Jason Coppin in 2019. His evidence is that he had been aware of the site and that there were caravans on it for many years (pre-dating the early 2000s), and that he had been in negotiations with the owners to purchase it for around 6 years before doing so. Once he had acquired the site he moved on with a mobile home in July 2019 and has lived there ever since. As there had been caravans on the site and it had been occupied for so many years he did not think that there would be any issue in continuing to use it in this way – indeed that was why he had wanted to buy the site.
19. All of the witnesses provided clear and credible evidence. Ms Coppin was able to help with details regarding her father's and brother's use of the site which were within her own knowledge but clear that she could not talk for her brother including in relation to his intentions. Likewise, Mr Lindsell was a helpful and independent witness who answered the questions put to him in a straight-forward way. None of the evidence provided by them contradicted overall with the evidence submitted by the Council.

Reasons

20. The Council's case is that the original caravans on the site had not been used for some time. As the original mobile home was destroyed and the touring caravan fell into disrepair, they say the residential use has been abandoned. The Council does not take issue with the factual evidence of use provided by Ms Coppin and the other witnesses but argues that the use was lost as there had been no intention for anyone to live on the site permanently over several years.
21. The area of land shown on the enforcement notice and LDC is the same. I am satisfied that this is the correct planning unit as it is in the same ownership and used in association with that residential occupation. It is not separated by any fencing or other boundaries internally, although there have been various associated outbuildings which probably housed small animals such as chickens, ducks and rabbits and possibly equipment. There was no evidence before me to suggest that there had been more than one use of the land, or that parts operated in a way which was physically or functionally separate.
22. The development alleged in the notice is of a material change of use and this does not simply constitute the use of particular caravans. Caravans by their very nature can be moved, are unlikely to last as long as built structures and may need to be replaced over time. The removal of an old caravan and replacement with a new one does not mean that a residential use of a site has been lost. In addition, a residential use of a site is not lost simply because it is not permanently occupied or is used less frequently.
23. The caselaw in relation to abandonment is well established¹. The mere cessation of a use is not development but there can be abandonment if a building or land "remains unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned."²

¹Panton & Farmer v SSETR & Vale Horse DC [1999]JPL 461, Trustees of Mynach Estate v Taff-Ely BC [1985] JPL 40 and Hughes v SSETR [2000]80 P&CR 397

² Hartley v MHLG [1970]1QB 413

24. It is appropriate to consider four criteria, namely in this case: the period during which there has not been residential use; the physical condition of the land or building; whether there had been any other use; and the owner's intentions as to whether to suspend the use or to cease it permanently. The test of the owner's intentions should be objective and not subjective.
25. The development which the Council say has been abandoned is the residential use of the land. A caravan is not a building, although there were other structures on the site, some of which remain today, and which would fall within the definition of a building (e.g. the garage, and various sheds). These structures supported and were ancillary to the original residential use.
26. The Council are not arguing that there was a different planning use after the residential use initiated by Alfred and Stella Coppin. But they say that the period of non-use, and physical condition of the land (and particularly the caravans as the units of occupation) show the subsequent owners' intentions to cease the residential use as they had no plans themselves to live on the site in a caravan.
27. The alleged period of non-use must flow from the fact that the Council are not arguing that there has been an intervening use. As there has been no material change of use then the use described by Nicola Coppin after the deaths of her grandmother and father falls within the same planning use i.e. residential, albeit of a holiday/recreational nature rather than as a permanent place in which to live as a main home.
28. The evidence is that the number of visits to the site reduced over time, and then dwindled to almost nothing after about 2012. However Ms Coppin stated that she had stayed at the site on several occasions after 2010 with her last visit in 2012. The period where there was no residential use at all is therefore between around 2012 and 2019.
29. The Council argue that the period of "non-use" began in 2006 following the removal of the mobile home. However, even taking this longer period, the Council accept that it is not in itself conclusive in showing abandonment, and that the other criteria need to be considered.
30. The planning application for a dwellinghouse was made in 2006 so that the family could live on the site. Permission was required (and refused) for the operational development but the use of the site if granted would still have been residential. Additionally, an owner of the site does not have to intend to put it to a particular use personally for a planning use to continue. Many commercial planning units are owned by a landlord who has no intention of using the site themselves without it being suggested that the use has been abandoned. And dwellinghouses can remain empty for a considerable period of time without the owner having any intention of living in it themselves without there being concern that the use would be lost. It is a matter of fact and degree in each case, and abandonment can only be assessed taking into account the criteria and principles set out in caselaw.
31. Nicola Coppin was clear that she and her brother had an emotional attachment to the site due to its long history within their family and therefore did not sell it for several years after their regular use of it ceased. And whilst they allowed some of the structures to fall-down or removed those beyond repair, they did continue to maintain the site overall including some of the key buildings e.g.

the garage and large shed. The touring caravan which remains on the site has been in various states of repair at different points in time, but this is consistent with the change in the frequency of use of it. In any event, the state of the caravan alone is not in itself sufficient to show that the use of the site had been abandoned. The photographic evidence from 2016 is not incompatible with the evidence of use given by Ms Coppin and in part corroborated by Mr Lindsell. The Council submitted that an objective passer-by seeing the site at that time would have concluded that it was the owners' intention to abandon the residential use. However, the physical state of the site is only part of the story and insufficient alone to show that abandonment had in fact taken place.

32. Nicola and Jason Coppin as owners of the site understood that there was a value attached to the residential use, notwithstanding that they did not wish to use it in that way themselves (i.e. by living in a caravan). The maintenance that they undertook, as described by Ms Coppin and corroborated in part by Mr Lindsell, leads to the objective view of the owners' intentions being that they had not abandoned the use even though the physical condition of the site had deteriorated overall. The ongoing discussions regarding the sale with the appellant, which took place over many years, also lends weight to this view as it shows that they were considering whether to sell the land for that existing and ongoing use.
33. The planning use of the land is distinct from the occupation and siting of any particular caravan on the site. Whilst the regular residential occupation of the site had ceased for a fairly short period of time overall (2012 – 2019) there was still some ongoing maintenance of the land and several buildings which indicates the owners' intention to maintain the use. The planning use does not require that a particular caravan be used or maintained, and as did happen when the appellant purchased the site, a replacement caravan can be sited to resume the occupation. A reasonable onlooker having knowledge of all of the facts would not have the impression that the planning use was being abandoned by the owners, notwithstanding that there had not been actual use for some years and that the site was increasingly overgrown.
34. Considering all of these factors together, on the balance of probabilities, abandonment of the residential use of the site has not happened in this case.

Conclusions

Appeal A

35. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.
36. In these circumstances, the appeals on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

Appeal B

37. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the siting of caravan for human habitation including incidental domestic use of the land and associated buildings 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).

Zoë Frank's

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Rudd, Counsel

He called:	Matthew Green, Director, Green Planning Studio Limited
	Wayne Stanley (the appellant)
	Craig Lindsell
	Nicola Coppin

FOR THE LOCAL PLANNING AUTHORITY:

Josef Cannon, Counsel

He called:	Lisa Page, Senior Planning Officer
	Steve Jarman, Head of Traveller Assessments, Opinion Research Services Limited
	Alan Massow, Principal Planning Policy Officer
	Natalie Banks, Senior Planning Enforcement Officer

DOCUMENTS

- 1 Appellant's Opening Statement
- 2 Council's Opening Statement
- 3 Draft Conditions
- 4 Council's Closing Statement
- 5 Appellant's Closing Statement

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 26 June 2020 the use 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 use is immune from enforcement action by virtue of section 171B(3) of the Town and Country Planning Act 1990, having been taking place for more than 10 years at the date of the application and having not been abandoned.

Signed

Zoë Franks

Inspector

Date: **27TH MARCH 2024**

Reference: APP/Z1510/X/23/3328256

First Schedule

The siting of caravan for human habitation including incidental domestic use of the land and associated buildings.

Second Schedule

Land at 55 Sportsman Lane, Hatfield Peverel, Essex, CM3 2NP

IMPORTANT NOTES – SEE OVER

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 /operation 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.

