
Appeal Decision

Inquiry held on 17 – 18 February 2015

Site visit made on 16 February 2015

by Katie Peerless Dip Arch RIBA

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

Decision date: 24 March 2015

Appeal Ref: APP/W1715/X/14/2221824

Hill View Manor Park, Winchester Road, Fair Oak, Eastleigh SO50 7HD

- 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 A Barney against the decision of Eastleigh Borough Council.
 - The application Ref U/13/73559, dated 30 October 2013 was refused by notice dated 9 January 2014.
 - 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 stationing of a mobile home for residential purposes.
 - All the evidence to the Inquiry apart from that of Mr Ward was given under oath.
-

Decision

1. 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.

Main Issues

2. I consider the main issue in this case is whether a mobile home on the site had been continuously occupied for residential purposes for a period of at least 10 years prior to the date of the application and, if so, had not been abandoned since the time that period was achieved.

The appeal site

3. The appeal site is part of a wider landholding owned by the appellant. It is a relatively small corner of a field behind Hill View Manor mobile home park (also owned by the appellant), the remainder of which is used for keeping horses. The site contains a timber clad mobile home standing on a concrete base on a wider area of hardstanding that is surrounded by fencing and accessed through gates from the field.
4. There are also 2 sheds and a chicken house and, at the time of the site inspection, there were various vehicles, domestic ornaments and agricultural items on the land. A hard surfaced track leads up from Winchester Road, through the field, to the site. The mobile home was being lived in by the appellant and contained a living area with a kitchen leading off it, 2 bedrooms and a bathroom.

Relevant planning history

5. An application for a LDC for the residential use of a mobile home on the appeal site, ref: U/12/70695, was refused in 2012.

Reasons

6. The appellant's case is that there has been a mobile home on the site for many years and he can demonstrate that it was in a continuous residential use between 1993 and 2003 (the relevant period). This period would establish the 10 years use needed for the issue of an LDC, provided that the use had not subsequently been abandoned. He says that the original structure was replaced in 2007 but, although there was a break in the residential occupation of the site for a time after this, the intention was always that someone would live in the new unit. The mobile home that is now on site has, according to the appellant, been occupied from 2009 to the present day.
7. The chronology of the occupants since 1993 are claimed to be as follows: from 1993 to early 2000 it was used by a Mr J A Goddard. After he moved out, the unit was taken over by Mr D Saunders, who stayed from March 2000 to the end of 2002. He vacated the mobile home to allow the appellant (who had purchased the wider site, including the mobile home park and a bungalow known as 'Hillview' in 2001) to use it himself.
8. Mr Saunders returned in February 2004 and stayed again until the end of that year when another tenant, said to be a Mr M McFarlane, took over in January 2005. Mr Saunders returned again in March 2006 and left again in October of that year.
9. It was in late 2007 that the appellant purchased the new mobile home unit and brought it onto the site. It does not appear to have been occupied until Mr Saunders came back again in November 2009. He stayed until February 2011 when the appellant once again took over and he has been in occupation since then.
10. Verbal evidence of this timescale was given by the appellant and Mr Saunders to the Inquiry. Mr Goddard was due to be a witness but, at the time of the Inquiry, he was in hospital awaiting a heart operation. His original witness statement for the Inquiry has, however been converted into an affidavit sworn and signed before a solicitor.
11. The Council considers that the evidence presented by the appellant is inconsistent and lacking in relevant detail. The witness who is said to have occupied the mobile home for the majority of the relevant period was not available for cross-examination and the mobile home has been described as a '*building*', a '*barn*' and an '*existing stables/general store*' by previous agents working for the appellant. The Council also points to some inconsistencies in the affidavits of the appellant and Mr Saunders.
12. It does not however, suggest that there was no structure on the site for the relevant period and the aerial photographs show some sort of structure there in 1991, 1999 and 2000. By 2005, before the new unit was brought onto the site, the structure is in the same position but appears larger. It was suggested by the appellant that this could be due to the modifications and repairs that were carried out to it, before it was finally dismantled in 2007. There is therefore consistent evidence of the original unit being in position for the relevant period.

13. The Council has queried whether the unit was, in fact, a mobile home and bases its doubts on comments noted above, made by the previous agents. The first agent visited the site in August 2007, at the time when the appellant says he was dismantling the mobile home, prior to replacing it. At that time the appellant said that the floor had been removed and the sides of the unit and part of the roof had been taken down and it could therefore have been mistaken for a dilapidated barn. It had not been lived in since October 2006 and it is therefore not unfeasible that no signs of a residential use remained at that time.
14. The only other evidence to suggest that the original unit was a building is a reference made to a 'barn' by another agent in May 2009, who in the same letter also says '*I have now visited the site. . .*' thereby indicating that he would not have seen the previous structure that was removed in 2007. This agent corrects the reference in an e-mail of July 2009, saying that the appellant had now informed him that the previous structure was, in fact, a mobile home. I consider that the weight of evidence supporting the contention that the original unit was a mobile home is convincing.
15. The Council has not produced any documentary evidence to contradict the evidence of Mr Goddard apart from aerial photographs from the time of his occupation which do not appear to show the hardstanding that he refers to in a letter dated March 2012 that accompanied a previous application for a LDC. Mr Saunders has also referred to such a hardstanding. However, there is photographic evidence that a track existed across the field in 1969 but, by 1999, this had grown over to the extent that it could not be seen on the aerial photograph of that date. It is therefore entirely possible that the same had happened to any hardstanding around the original unit and that it also could not be distinguished from the other land surrounding it.
16. The appellant did not own the site at the time Mr Goddard was in residence and any inconsistencies in his recollection of the dates of his own occupation do not, therefore, reflect on the veracity of Mr Goddard's evidence, which I have been given no reason to doubt.
17. Mr Saunders was very specific about the dates when he occupied the unit; he told the Inquiry that it was there that he went after absconding from prison in March 2000 and this would clearly be a date that he was likely to remember accurately. Again, the Council has put forward no evidence of its own to suggest that Mr Saunders was mistaken about the dates of his occupation.
18. He also corroborated the evidence of the appellant that there was a change of occupant at the end of 2002, when he vacated the unit to allow the appellant to move in. Although the appellant appeared somewhat muddled when recalling the chronology in his oral evidence, this was mainly related to the period after 2003 and up to 2009, which is outside the relevant period. It does not, therefore, affect the probability that the other 2 occupants were correct in their recollection of the relevant dates.
19. There has been mention made of 2 phone calls from members of the public who live on the adjacent caravan park and who reported that no-one was living on the site before the appellant. These contacts did not want to put their comments in writing or to be identified; they have given no specific detail on their knowledge of the site or the timescale their residence covers and I can therefore accord them no weight.

20. The Council tax records for the bungalow at Hillview do not relate to the relevant period and, in any event, are broadly consistent with the appellant's evidence that he lived there from 2004 – 2011.
21. It is a well established principle that, if the evidence produced to support an appeal against a refusal of an application for an LDC is sufficiently precise, unambiguous and not contradicted by other evidence sufficient to make the appellant's version of event less than probable, the appeal should succeed.
22. In this case, the evidence of the witnesses supporting the appellant is unambiguous in relation to the dates of occupation of the mobile home between 1993 and 2003 and I consider that the Council has produced nothing that is sufficiently contradictory to indicate that it should be set aside. Although there is no documentary evidence to support Mr Goddard's and Mr Saunders' accounts there seems to me to be no absolute requirement for specific and precise evidence given under oath to be corroborated by additional written confirmation. Mr Goddard's evidence was not tested and this could reduce the weight accorded to it, but it was given under oath and his various accounts of his occupation of the mobile home have not varied since the first application for a LDC was made in 2011. Although further documentation might strengthen the appellant's case, a lack of it does not necessarily make the evidence less credible.
23. The Council has not made a case that, if a lawful residential use is found to have been established in the relevant period, it has since been abandoned. Although there appears to have been gaps in the occupation of both mobile homes after 2003, particularly in 2007 – 2009, I consider that there has been nothing to suggest that the appellant intended to abandon the use. He did tell the Council's enforcement officer that the new unit was intended for storage, but at that time he was unsure whether he would be able to replace the old unit and did not want to draw attention to any, possibly unauthorised, residential use on the site. There is no evidence to suggest that the new unit was ever used for anything other than residential occupation.
24. Therefore, I conclude that, on the balance of probabilities, a residential use of a caravan on the appeal site took place continuously in the 10 year period between 1993 and 2003 and was not subsequently abandoned. It was therefore immune from enforcement action at the time the application for the LDC was submitted.

Other matters

25. When it became clear at the Inquiry that Mr Saunders had been living at the mobile home after having absconded from prison, the Council suggested that this amounted to deception and that the period in which Mr Saunders was in occupation from 2000 to 2002 should not count towards establishing the 10 years needed to establish a lawful use.
26. The Council consider that, whether or not the appellant knew the truth of the situation, the period when Mr Saunders was in residence could not count towards the qualifying period as it was an illegal act. They quoted *Holman v Johnson [1775] 998 ER 1120* which, as I understand it, established that a person should not be able to take advantage of a legal remedy if it arises through his own illegal act. Following on from this, they quoted paragraph 46 of *SSCLG and another v Welwyn Hatfield Borough Council [2011] UKSC 15*.

27. The test of whether an act of deception can lead to a forfeit of the time limits for enforcement action included in s171B (2) of the Town and Country Planning Act 1990 (as amended) and which is set out in *Welwyn Hatfield*, is a high one. I consider that the test has not been met in this case as the appellant has not sought to deliberately mislead the Council over the residential status of the caravan in the relevant period. Neither has there been any conduct equivalent to the '*deliberate, elaborate and sustained plan to deceive the Council*' that had occurred in the *Welwyn Hatfield* case.
28. The appellant's his own evidence was that he didn't know the occupant had absconded from prison and didn't find out until he was re-arrested in 2006 which is after the qualifying period ended. He gave this evidence before the Council raised the question of possible deception and *Welwyn Hatfield*.
29. In any event, I agree with the submission that it was the act of absconding that was the illegal act. This is a separate matter from the residential occupation of the caravan. Mr Green, the appellant's agent, referred to the case of *Epping Forest District Council v Philcox [2002] Env LR 2* as quoted in paragraph 57 of *Welwyn Hatfield* and claimed it is on all fours with this case, in that it established that, even if there had been an illegal operation taking place, there was '*no principle that the plain words of a statute which define what is lawful were to be read subject to a proviso that what is criminal cannot be lawful*'.
30. This, I consider, confirms that whether or not the appellant or Mr Saunders were doing something illegal, this is a separate matter that should be dealt with under legislation other than the planning regime. It does not affect whether a use had become lawful in planning terms. I conclude that the fact the Mr Saunders was 'on the run' at the time he was living in the mobile home does not mean that the unit ceased to be in a residential use at that time, nor that there was deception taking place that indicates that a LDC should not be granted.

Conclusions

31. 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 stationing of a mobile home for residential purposes on land at Hill View Manor Park 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.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Green Planning Studio Ltd, who also gave evidence
He called	
A. James Barney	Appellant
Derek Daniel Saunders	Former occupant of appeal site

FOR THE LOCAL PLANNING AUTHORITY:

Nia Cary	Solicitor for Eastleigh Borough Council
She called	
Mark Fletcher	Monitoring and Enforcement Officer, Eastleigh Borough Council
Allan Richard Ward	Head of Legal and Democratic Services, Eastleigh Borough Council

DOCUMENTS

- 1 Affidavit of James Anthony Goddard
- 2 Notes of Miss Cary's opening submission
- 3 Supporting Statement for application for a certificate of lawfulness dated March 2012
- 4 Letter from Miss Cary to appellant's former agent, dated 25 May 2012
- 5 Bundle of information submitted with previous application for a LDC dated 30 April 2012
- 6 Notes of Miss Cary's closing submissions and appendices
- 7 Notes of Mr Green's closing submissions
- 8 Appeal Decision 2204970 submitted by the appellant

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 30 October 2014 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 residential use of a mobile home had taken place continuously for at least 10 years prior to the date of the application and has not been subsequently abandoned.

Signed

Katie Peerless
Inspector

Date 24.03.2015

Reference: APP/X/14/2221824

First Schedule

The stationing of a mobile home for residential purposes.

Second Schedule

Land at Hill View Manor Park, Winchester Road, Fair Oak, Eastleigh SO50 7HD.

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 24.03.15

by **Katie Peerless Dip Arch RIBA**

Land at: Hill View Manor Park, Winchester Road, Fair Oak, Eastleigh SO50 7HD

Reference: APP/W1715/X/14/2221824

Scale: NTS

