

**NORTH SOMERSET COUNCIL
DELEGATED PLANNING APPLICATION
REPORT SHEET**

Target Date: 07 May 2014

Application No. 14/P/0609/LDE

Application Type: S191 Lawful

use/Development - existing

Case Officer: Karen Bartlett

Application for: Application for certificate of lawful development for the existing use of a static caravan as a permanent residential dwelling.

Land at: Purn Holiday Park, Bridgwater Road, Bleadon, BS24 0AN

The Application

The application dated 11/03/2014 is for a Lawful Development Certificate for an Existing Use, Operation or Activity (a CLEU) for an existing use under Use Class category C3 of one static caravan as a dwelling. The application says that the caravan has been used continuously as a dwelling for more than ten years.

The Law

Section 191 of the Town and Country Planning Act allows for any person to ascertain whether a use is lawful by making an application for the purpose to the local planning authority specifying a land and describing the use, operations or other matter. Uses and Operations are lawful at any time if –

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Section 191(4) states:

If, on an application under this section the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

The burden of proof in these applications is on the applicant and the relevant legal test is on the 'balance of probabilities', if there is no evidence that the local planning authority have of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

Section 191(5) states as follows:

A certificate under this section shall –

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matters to be lawful; and
- (d) specify the date of the application for the certificate.

National planning policy guidance

Circular 10/97 Annex 8 was replaced with the NPPG on 6 March 2013 which provides additional guidance.

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under s191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force. The granting of a certificate does not remove the need to comply with other legal requirements such as The Building Regulations 2010 or the Planning (Listed Building and Conservation Areas (Act) 1990 or licensing or other permitting schemes.

An application needs to precisely describe what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing the certificate. This does not preclude another application being submitted later on, if more information can be produced.

The applicant is responsible for providing sufficient information to support an application, although a local authority always needs to cooperate with an applicant who is seeking information that the local authority may hold about the planning status of the land. A local planning authority is entitled to canvas evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter evidence.

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'.

A local planning authority needs to consider whether on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessary conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

The Evidence

Statutory declaration of Mr Geoffrey Bass who states when he purchased Purn Holiday Park from Snooty Fox Ltd on 28 February 2006 it included one static caravan for all year round use by the manager which is identified in green on plan 1 and is known as Green 16. This caravan has been occupied permanently by members of staff.

Mr & Mrs Griffiths occupied the caravan from February 2006 until 2008.

Mr & Mrs Bass occupied the caravan from 2008 until April 2010

Mr & Mrs Turnbull occupied the caravan from April 2010 to date

Since Mr Bass' ownership the caravan has been in continuous occupation.

Supporting information includes:

Letter from Mrs R A Murphy who was employed at the park from 2001 to 2011 states that managers were staying in static caravan Green 16 all year round and they never vacated their accommodation during the shutdown period. She confirms Mr & Mrs Ellenore were managers from 2002 until 2005, Mr Faulds was manager from 2005 to 2006, Mr & Mrs Griffiths were managers from 2006 until 2008 and Mr & Mrs Bass lived in the manager's accommodation from 2008-2010. Mr & Mrs Turnbull have been managers from 2010 until the present day

Statutory declaration of Paul Suggit who states he was operations director for Snooty Fox Lt from May 2003 to January 2007. He became involved in the park from May 2003 and Snooty Fox Ltd permanently housed a manager in one static caravan all year round. Mr & Mrs Ellenore were managers until 2005 followed by Mr Faulds.

Statutory declaration of Kelvin John Thomas who states he is the managing director of Fox Leisure. From 2001 the park was sold to Snooty Park Ltd who continued to use the managers caravan as permanent accommodation for a member of staff until he was involved in the sale of the park to Mr Geoffrey Bass in 2006. The situation at the park has been the same since 1989. Supporting document includes sales particulars from June 1989 which refers to the "mobile home bungalow for proprietor/manager and pending planning application for a permanent residence".

Assessment of the Evidence

1. Does the use, operation or other matter involve development or require planning permission?

S.55 of the Town and Country Planning Act 1990 defines development as a material change of use of the land. Planning Application 2980/89 approved the authorised use of the land is for the operation of Holiday-Park on eleven month per year basis to discourage residential use.

Generally, the use of a caravan for permanent C3 residential use would require planning permission. However, considering the nature of the occupation of the Manager's caravan it may be considered incidental to the primary use. If this were the case and the licence permitted it, the use of the Manager's caravan as a dwelling may not require planning permission. However the continuous occupation of the manager's caravan is a breach of condition set out by planning application 2980/89.

2. Are there any extant enforcement notices and if so, does the use, operation or other matters contravene any requirement of that/ those enforcement notices?

There are no extant enforcement notices.

3. When did the material change in use/operational development in breach of planning control occur?

The evidence covers a range of dates of the change of use of the caravan to C3 residential based on various experiences with the site. The earliest experience of the use of this caravan as a residential unit is in K. Thomas' declaration (document 6) which, encloses an advert for the sales particulars of Purn Holiday Park in 1989 which describes the manager's caravan or Green 16 as a, 'twin unit mobile homes for proprietor/manager'.

The exact date is uncertain but all declarations cover the relevant time period of March 2004 to March 2014.

4. What is the relevant time for taking enforcement action (4 or 10 years) ?

The time limits determining when a use is immune from enforcement action are set out in on 171B of the Act and are:

(1) where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

The time limit for taking enforcement action is within ten years of the first occurrence of the breach.

5. What is the date of the application and has the time for taking enforcement action expired?

The application dated 11/03/2014 and so the period within which enforcement action could be taken is from 11/03/2004 to 11/03/2014. As such, the time for taking enforcement action has expired.

Conclusions

The applicant claims the use of the Manager's Caravan of 'Green 16' has been continuously used for residential purposes for a period of more than ten years; with one statutory declaration stating the change of use occurred in 1989 and others covering the relevant ten year period. The use of a caravan for manager's accommodation is incidental to the primary use of the site. However, the use of the manager's accommodation for 12 months of the year is a breach of condition for which planning permission is required.

There is no evidence, from the Local Planning Authority or from other sources, to contradict or otherwise make the applicant's version of events less than probable. As such, 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'.

Recommendations

The evidence has been assessed as set out above and the local planning authority is satisfied, on the balance of probabilities, that the information provided supports the claim and in consequence the application should be approved. The information is sufficiently precise and unambiguous to justify the grant of a certificate.

Signed: ...Karen Bartlett

Dated:...05 June 2014