



Appeal Decision

Site visit made on 11 August 2014

by **D H Brier BA MA MRTPI**

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

Decision date: 18 August 2014

Appeal Ref: APP/N1350/X/13/2206233

The Caravan, Oaklands Meadows, Middleton St George, Darlington DL12 1EY

- 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 J King against the decision of Darlington Borough Council.
- The application Ref13/00427/LU, dated 24 May 2013, was refused by notice dated 6 August 2013.
- The application was made under section 191(1) (a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is use of land as a dwelling (Use Class C3) by residing in a residential caravan.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. Although no issue has been taken with the description of the development for which the LDC is sought, my view is that it is more succinct and appropriate to describe it as 'use of land for the stationing of a residential caravan'. My decision will be made on this basis.
2. In order for the appeal to succeed it has to be shown that the use in question commenced more than 10 years before the date of the application, that is 24 May 2003 (the relevant date), and has continued since then. The Courts have held that the onus on proving the case lies with the appellant. The appropriate test for the evidence is on the basis of the balance of probability.

Reasons

3. The appeal is based on the premise that the appellant has lived on the site for more than 10 years. The caravan is said to have been placed on the land in 1997 and has been occupied as a dwelling continually since then. Evidence in support of this is in the form of 3 statutory declarations¹, including one by the appellant, letters from former residents, various photographs and various documents purporting to concern the appeal site.
4. The appellant's statutory declaration states that throughout his residency at the site since 1997 the caravan had been permanently occupied as a dwelling. **Mr B Robinson**, the occupier of Oaklands Farm, one of 3 neighbouring

¹ The three declarations are all dated 22 May 2013.

dwellings, also indicates that the appellant has occupied the caravan since 1997. However, as this party also states that he has only been in residence for 6 years, the basis of this assertion is far from clear. The signatory does refer to having lived in the 'neighbouring area' for over 10 years, but just what this means is not elaborated upon. The declaration by **Mrs Bryan**, the occupier of Byers End, another of the neighbouring dwellings, indicates that she had only lived at Byers End for 5 years and although the declaration refers to her knowledge of the appeal site for 2 years prior to that, her do not recollections span the relevant 10 year period.

5. In his letter, **Barry Lamb**, who says he lived nearby and visited Mr King 'frequently' until 2001, refers to the appellant's acquisition of the land from his late uncle in 1997 when he then placed a caravan on the land and began living in it. A similar version of events is set out in the letter from **Kerry Anne Dawson** who indicates she lived at Oaklands Farm from 1993 to 2002. **Myrtle P Sunley** mentions a caravan having been brought onto the land within a week of the appellant purchasing the land and refers to her late partner seeing the appellant when he was at Oaklands Farm up to his death in 2006. **Jackie Wade and Ashley Walker**, who lived at Oaklands Farm from October 2003 to June 2007, mention calling on the appellant in his caravan and also refer being aware that he had lived in it for "quite some time" prior to their purchase of Oaklands Farm.
6. On the face of it, the written evidence from persons who either live or lived nearby, or had an interest in Oaklands Farm, appears to offer strong support to the appellant's case. However, even though some of this evidence is in the form of sworn declarations, the picture that it paints is not particularly clear. For instance, despite the appellant's claim to have occupied the caravan permanently since 1997, there is nothing else in his declaration that helps to shed light on the matter, it is even silent as to just when in 1997 the occupancy began. The parties concerned evidently have some knowledge of the appellant and the appeal site and the evidence spans a period from 1997 onwards. Nevertheless, although 2 of the parties expressly refer to visiting or calling in on the appellant, the precise depth and extent of their knowledge of the nature of the occupancy of the caravan is unclear from the material that has been presented. Moreover, while the suggestion assertion by local Councillors that the appellant has been residing elsewhere in Middleton St George has been denied, advice given to the Council's enforcement officer when he visited the caravan and found it unoccupied does not sit comfortably with the other written evidence.
7. One thing that struck me was that although both Oaklands Farm and Byers End are not far away from the appeal site distance-wise, the caravan is in a very secluded and contained position relative to these dwellings. In particular, the southern edge of the appellant's land is flanked by tall vegetation, a high fence and a range of sheds. Moreover, the appeal site has its own separate access and there are tall hedges between the access that serves Oaklands Farm and Byers End and the appellant's land and immediately to the east of the caravan.
8. The degree of seclusion - the appellant acknowledges that the caravan is not visible from the road - is such that despite the relative proximity of the nearby dwellings, the precise pattern and extent of the occupancy of the caravan would not have been easy to ascertain. And despite the references to visits, there is nothing before me that points to any of the parties concerned having

had a deep knowledge of the pattern of occupancy of the site on a day-in day-out basis. While the evidence points to various parties having been acquainted with the appeal site to a certain extent, I am not satisfied that it is sufficiently clear or robust to show that the use in question is lawful.

9. While the accounts from Northumbrian Water before me only go back to June 2012 the latter is marked 'Bill 32' which suggests that they form part of a series going back much longer, as is claimed. However, while the property address given is field 226, Middleton St George, and they are addressed to Mr J King, the billing address is 26 Gleneagles Road, Darlington. The appellant has explained how this came about, but I am concerned that this imparts an element of ambiguity into his case nonetheless.
10. An electricity supply agreement from Npower, together with related invoices, are addressed to the appellant at Oaklands Meadows, as are copies of payment notes for cattle. However these documents are not inconsistent with the appellant's claim, they do not in themselves show there was a continuous residential presence on the land. Moreover, as they span a period ranging from August 2004 to March 2013, they fall short of demonstrating that the appellant was residing at the site on or before 24 May 2003. The herd register for bovine animals, which also gives the address as Oaklands Meadows has entries going back to August 1998, but while this may well be indicative of the appellant's farming activities on his holding, it sheds little light on any residential presence. The same goes for the cattle passport bar codes, the Tuberculin test report, the Cattle Identification Inspection Report, and the confirmation that an NFU Mutual insurance policy has been in force at Oaklands Meadows since October 1997.
11. An aerial photograph shows what looks like the caravan on the land but is undated, as is another purporting to be a 'Google' street map one, in which case I am not inclined to attach much weight to them. The other photographs are said to have been taken on 11 February 2013, so offer little indication as to how long the caravan had been present on the land or indeed whether it was occupied at the time.
12. I appreciate that an applicant [or appellant] will often be best placed to produce information about the use of land and that this does not have to be corroborated. Be that as it may, even though in this instance some of the evidence put forward is in the form of statutory declarations, I find that the burden of proof that rests with the appellant has not been discharged. For the reasons given above, I am not satisfied that the evidence is sufficiently clear or unambiguous to demonstrate, on the balance of probability, that the use in question began more than 10 years before the date of the LDC application and continued actively throughout the following 10 years. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that the appeal should not succeed.
13. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

Formal Decision

14. I dismiss the appeal.

D H Brier Inspector

