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## Appeal Decision

Inquiry opened on 15 September 2015

Site visit made on 6 January 2016

**by D E Morden MRTPI**

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

**Decision date: 14 June 2016**

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**Appeal Ref: APP/W1850/X/15/3002415**

**Redwood Orchard, St Michael's, Tenbury Wells, Worcestershire, WR15 8TL**

- 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 Ms B Eakins against the decision of Herefordshire Council.
- The application Ref P14232/U, dated 25 August 2014, was refused by notice dated 15 December 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 full residential use.
- The inquiry sat for 2 days on 15 September 2015 and 6 January 2016.

**Summary Decision: the appeal is dismissed as set out in the Formal Decision at paragraph 38 below.**

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### Preliminary Matters

1. The application as submitted simply states 'full residential use' but does not actually state what that claimed use applies to. The parties agreed that the correct description should be 'Use of the land as a caravan site for the siting of one residential caravan' and it was also agreed that it referred to the whole of the appellant's land that had been edged blue on the application plan (and the 'caravan' shown edged red).

### Procedural Matters

2. Whilst the issues in the appeal are quite straightforward the status of the land is not and that affects the outcome of this appeal. The appeal land was what remained with the appellant after she had sold off the farmhouse and other land (other properties that were originally all part of one larger area of ownership had also been sold off at different times for a variety of reasons). That does not affect establishing what the three 'applications' that were made from 2012 onwards were for and what they actually mean in terms of both the status of the appeal site land and the structure currently on it.
3. In April 2013 a LDC application was submitted to try to establish the lawfulness of the caravan that was on the site at that time. The LDC that was granted in June 2013 stated that the application was for 'use of land for the siting of a single mobile home'. The decision stated the reason for approving a certificate was that 'the local planning authority is satisfied that the information submitted

in support of the application demonstrates that a mobile home has been stationed on the land for a continuous period in excess of ten years'. In a second sentence it stated 'However, this certificate does not permit the permanent residential occupation of the mobile home as the applicant has failed to demonstrate occupation for a continuous ten year period prior to the submission of the application'.

4. Both sides agreed at the inquiry that the LDC was of no help and should not have been issued in that form. There may be situations where the stationing of a mobile home on land might be permitted development or not even development at all. The important point is what was the mobile home being used for over the 10 year period? The fact that it was considered lawful to station it there was of no help in trying to establish the lawful use of the land.
5. After some exchanges of correspondence between the appellant and the Council to try to understand what the LDC actually meant, the appellant submitted a planning application in October 2013 described as 'replace an existing mobile home (which has a LDC) with a log cabin, new driveway, parking and turning area'. The plan showed a structure that was 15 metres long by 6.4 metres wide.
6. The external height of the ridged roof was 4.35 metres. The floor plan showed a large open plan seating area with a wood burning stove in it; a tack storage room, a small room marked as storage, a study, a bathroom, a kitchen and a lobby area (the originally submitted plans labelled the two storage rooms as bedrooms and the open plan seated area was marked as a living room).
7. The Council issued a 'decision' notice which is headed Town and Country Planning Act 1990 and is entitled 'APPLICATION NOT REQUIRED'. Having described the proposal as it was set out in the preceding paragraph this decision notice simply says 'The County of Herefordshire District Council hereby gives notice that permission or consent 'IS NOT REQUIRED' for the above application'. It is dated 23 January 2014.
8. The appellant's understanding of the situation was that she had permission to station a mobile home on the land by virtue of the first LDC and that she did not need permission to replace it with the 'log cabin' by virtue of the decision notice issued on 23 January. On that basis the old mobile home was removed and the 'log cabin' replaced it. She also understood, however, that she did not have permission to occupy the mobile home or its replacement 'log cabin' permanently (as a dwelling) and hence an LDC application for that use was submitted in August 2014 and is the subject of this appeal.
9. Counsel for both parties agreed that they did not really have any idea of the legal status and/or meaning of either document, particularly the latter one that was supposed to be a decision on a planning application but was worded as if it had been an LDC made under s192 (for a proposed development). The appellant's Counsel stated that he could not try to claim that it was a planning permission for the siting of the 'log cabin' on the site.
10. Ultimately it is a matter of law but in my view the LDC granted in June 2013 simply means that a mobile home ('caravan') can be stationed on the land and not be subject to enforcement action; no use is granted by that LDC. If any mobile home had been simply stationed on the land it may have been a chattel rather than development of any kind. If it had been considered to be

development but not used for anything, it may have been open storage use. If it had been stationed there and used for some purpose for 10 years, it is what that use was that is the material point and a determination should have been made on whether that use was indeed lawful. The appellant thought she was applying for a certificate that would confirm that she could carry on living on the site in the mobile home (she had applied for an LDC for existing use).

11. There is no dispute that it was a caravan and, therefore, a change of use of the land rather than an operational development. In those circumstances the LDC should have either confirmed that there was a caravan there that had been used for residential purposes for the requisite time and granted the certificate. In the alternative, if the Council did not think it had been used for long enough or indeed used for that purpose at all, it should have refused the application.
12. The planning application 'decision' is also, ultimately, a matter of law but in my view it does not constitute a decision at all. An application was made in the proper manner and on the appropriate application forms. The 1990 Town and Country Planning Act at s70 sets out that the local planning authority may either approve it - s70(1)(a), with or without conditions, or it may refuse it - s70(1)(b).
13. The 'decision' notice issued in this case does not refer to any section of the Act (which would be the normal procedure) nor does it state anywhere that 'the local planning authority hereby grants planning permission' for something or any words like that. It also does not give any reasons for its 'decision'. I do not consider that planning permission has been granted for anything by this 'decision'.
14. I will, therefore, determine this appeal on the basis that there is no planning permission for the 'log cabin' and there is no LDC for use as a residential caravan site for one caravan; only one for stationing a caravan on the land.

### **Main Issue**

15. In terms of the structure on site the issues were (a) was it a caravan within the definition in the Act or was it an operational development and (b) if it was a caravan had it been occupied for residential purposes for a continuous period of ten years either (i) immediately before the date of the application (25 August 2014) or (ii) some earlier 10 year period that was completed before that date and since when there has been no material change in the use of the land or the use has not been abandoned.

### **Reasoning**

16. Dealing with the first issue, the appellant acknowledged that if what was on site was operational development rather than a caravan, the appeal must fail as the LDC was for a use of land.
17. Whilst described by the appellant throughout the appeal and in the past as a 'log cabin' the appellant's case was that what had been put on site to replace the old 'standard' mobile home was a caravan within the definition in the 1960 Caravan Sites and Control of Development Act or as the case may be the revised definition in the 1968 Caravan Sites Act. I will refer to it as the 'log cabin' hereafter in this decision.

18. The 1960 Act defines a caravan as 'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and ....'. In the 1968 Act that definition was expanded to include a structure which (a) is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps or other devices and (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) even if to move it on the highway would be unlawful (due to its size).
19. The 1968 Act also set down maximum dimensions for the assembled caravan – length not to exceed 20 metres exclusive of any drawbar; width not to exceed 6.8 metres and the overall height of the living accommodation, measured internally, not to exceed 3.05 metres when measured from the lowest level to the highest level.
20. There was no dispute that the log cabin satisfied the size limitations set out above so would not be excluded from being a caravan for that reason. It is not affixed to the ground; it sits on three long beams (which can still be seen under the log cabin) and remains there by its own weight. There are connections to services some of which go underground (to the water and oil supplies, to the generator and for drainage) and emerge right beside the log cabin but that is no different to many caravans; those factors do not take it outside the definition of a caravan in my view.
21. The details of the 'construction' of the log cabin are very much less certain. The appellant stated that it was constructed on site building it in two long sections which were then bolted together. She admitted that it was not brought to the site in two sections ready 'to be assembled on site by means of bolts, clamps or other devices' as set out in the 1968 Act. The two sections were constructed from scratch on the site itself as one would do in a normal building operation and were then bolted together (having been pushed together with a large digger).
22. The roof was then added after the rest had been completed, again in the way that one would normally construct a roof if erecting a building. It was made of standard roof trusses and then tiled. Insulation and a wooden frame to support weatherboarding were added to the outside framework. Inside it was also boarded and there are, what look like 'normal' ceilings and walls (as you would find in a house), throughout.
23. Interested persons stated that whilst there were no foundations the cabin, for the most part, was built on site as one would construct any building. The difference here was only that it had no foundations in the normal sense of the word and once the two 'halves' were 'completed' they were pushed together and the construction was finished by 'building' the roof on top. This was not disputed by the appellant.
24. The appellant submitted in closing that the definition of a caravan does not set out where it might be constructed before being bolted together or else a twin unit caravan assembled at a factory could not be so defined. In my view that is not really what happened here. From the descriptions of interested persons and even the appellant herself, what occurred on site was, in my view, a

- building operation, just as one would see on many sites, where a wood framed dwelling was constructed.
25. Further it does not in my view satisfy the definition in the 1968 Act which refers to two separate sections separately constructed but which 'are designed to be assembled on site by means of bolts clamps or other devices'. In my view that is a different exercise to actually constructing the whole thing on site rather than it arriving on site already constructed and simply being assembled by being bolted or clamped together once it has reached a site.
  26. I acknowledge that it has no foundations and that some services are not connected in the same way as they would be to normal mains services but the description of what took place is no different to what would occur in a normal building operation to create the two long sections. With a twin unit caravan falling within the definition in the Act, each half of the roof is already on the corresponding half of the caravan and those two halves are then simply bolted together once they have been transported to a site.
  27. In this case once the two sections were joined together a roof with trusses and joists was constructed in the usual way and added to the whole structure. In this instance, as can be seen from the photographs, and as was described by some of those living nearby, the walls were constructed as a number of open frame wooden panels erected on site. French doors, other doors and windows were then added as the whole structure was 'built' on the site.
  28. Additionally, as set out in paragraph 18 above, the definition in part (b) of s13 of the 1968 Act (and indeed s29 of the 1960 Act) requires that a 'caravan' is when assembled, capable of being moved by road from one place to another (whether by being towed or transported).
  29. The onus of proof in an LDC appeal is on the appellant but there was no real evidence produced concerning whether or not the log cabin could be moved in line with the second element definition. In closing the appellant did not refer to this at all, simply stating that 'The relevant part of the definition is that a twin unit mobile home is a caravan if it composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices. The appellant needed to show that what was on the site satisfied both elements of the definition but did not do so.
  30. There was almost no evidence concerning the actual method of construction of the individual parts of the log cabin or of how they were joined together. What evidence there was mainly came from interested parties (but not disputed by the appellant) and stated that the log cabin was erected as one would erect any timber frame building with panels being affixed to the floor, then doors and windows and finally outer and inner walls and a ceiling added to the erected framework before the roof was constructed. From what I saw on site and from the limited information produced it seems to me that the log cabin was not constructed with any special features that would make moving it possible.
  31. It certainly cannot be moved by being pulled along and there were no strengthened parts of the structure that would allow it to be lifted on to a trailer. I acknowledge that it is no larger, and indeed is smaller, than many twin unit caravans but these are purpose built to enable them to be moved and transported by road (in two halves normally); there was no evidence that this could be done with the log cabin erected on this site.

32. Finally the appellant in closing submitted that if it was not a caravan, and it was not a building its presence would still only involve a use of the land. In this case the agreed description of the claimed use relates to the siting of a caravan; the appellant, both in opening and closing, agreed that if what was on site was deemed to be operational development and not a caravan, then the appeal must fail. I do not, therefore, need to make a determination on that submission by the appellant.

### **Conclusion**

33. The appellant claimed it was simply replacing one caravan with another and that would be permitted on a site that was lawfully a residential caravan site for the siting of one caravan. Taking all of the above factors into account, I conclude that what took place on the site was operational development – the construction of a wood framed log cabin – forming a two bedroom dwelling. It was not development that would fall under the ambit of a use of the land.
34. I have determined that what is on site is not a caravan but operational development and that is what was on site at the date of the LDC application. Accordingly it is not necessary for me to go on to determine the issue set out in paragraph 15(b) above. i.e., whether there is a lawful use of the land as a residential caravan site.
35. In all the above circumstances I conclude that the Council's decision to refuse the application was, therefore, well founded and I shall dismiss the appeal.

### **Other matters**

36. The appellant in closing also submitted that even if this was the decision I came to, and in normal circumstances the Council would then be able to take enforcement action against a building operation that had taken place less than four years ago, they were prevented from doing so in this instance by virtue of the substantive legitimate expectation created by the 'determination' of the planning application for the log cabin.
37. A critical question posed in the appellant's closing submission was, can the Council take action against it because it is operational development or can they take action against its residential use. In my view that is a question that needs to be answered if and when the Council decide to take enforcement action following the dismissal of this appeal. There is no enforcement notice before me and in those circumstances it is not a matter that I should determine or come to any conclusion on in coming to a decision on this appeal.

### **Formal Decision**

38. I dismiss the appeal.

***DE Morden***

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Mr R Langham	Counsel, instructed by Ms Eakins
He called	
Mr M Swidwa	Colleague of the appellant who had stayed in the property
Ms B Eakins	Appellant
Mr P Bell	Friend of the appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Miss T Osmund-Smith	Counsel, instructed by the Solicitor, Hereford Council
She called	
Mr A Prior	Planning Officer, Hereford Council
BA(Hons) MRTPI	

### FOR THE INTERESTED PERSONS

Mrs H Hamilton	Marches Planning & Property Consultancy, Little Covenhope, Aymestrey, Herefordshire, HR6 9SY
She called	
Mr W Moore	Interested person
Mr G Fraser-King	Interested person
Mr M Enfield	Interested person

## DOCUMENTS

- 1 Council's notification letter of the PI and list of addressees
- 2 Translations of four of the appellant's statutory declarations
- 3 Draft Statement of Common Ground
- 4 Appellant's bundle of further letters of support
- 5 Statement by Mr W Moore
- 6 Statement by Mr G Fraser-King
- 7 Statement of Mr M Enfield
- 8 Closing submissions of Mrs H Hamilton for interested parties
- 9 Closing submissions of Hereford Council
- 10 Closing submissions of the appellant

## PLANS

- A Appellant's corrected Appendix 1 plan

## PHOTOGRAPHS

- 1 Appellant's bundle of photographs showing current condition of caravan that used to be on the site.