The Planning Inspectorate

Appeal Decision

Site visit made on 26 August 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 05 October 2020

Appeal Ref: APP/B9506/X/20/3246016
Land to the rear of Cragside, Lyndhurst Road, Landford, Wiltshire SP5 2AS

- 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 & Mrs Michael Paice against the decision of New Forest National Park Authority.
- The application Ref 19/00801, dated 15 October 2019, was refused by notice dated 17 December 2019.
- 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 use of a mobile home as a separate unit of residential accommodation independently from the main dwellinghouse.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Local Planning Authority's (LPA) refusal to issue a certificate of lawfulness for the use of the caravan as a dwelling was well founded.

3. Under s191(1)(a) of the 1990 Act, any person who wishes to ascertain whether any existing use of buildings or other land is lawful may make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2)(a) of the 1990 Act specifies that for the purposes of the Act, uses and operations are lawful at any time if 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).

4. The time limit relevant for taking enforcement action under s171B(3) of the 1990 Act regarding the use of buildings or other land is the end of 10 years beginning with the date of the breach. The ground under which the appellants applied for the LDC was that the use began more than 4 years before the date of the application, although they now accept that 10 years is the relevant immunity period.

5. The appellants therefore need to show, on the balance of probability, that the occupation of the mobile home, and thus use of the land, for residential purposes has occurred for a continuous period of at least 10 years by the date

of the application for the LDC, which was 15 October 2019. Consequently, the evidence to support that claim needs to date back to at least 15 October 2009. The burden to make out the case rests with the appellants.

Reasons

6. This area of Landford is characterised by detached single and two-storey houses in long plots on the west side of the road, the B3079 Lyndhurst Road. Cragside was a bungalow, now demolished to make way for a new chalet bungalow in approximately the same position, currently under construction following a recent planning permission.[1] Cragside was the home of the male appellant's grandmother until her death in 2009, when the whole of the plot was inherited by his father. She apparently occupied the bungalow with her nephew.

7. The original residential plot has a long rear garden that borders an open field to the west. The appeal site comprises approximately a third of this rear garden land, within which is situated the mobile home close to its northern boundary and a variety of dilapidated structures, old vehicles and storage of various materials close to its southern boundary. The appeal site also includes the northern part of the original plot's frontage and part of the existing access including a vehicular access running behind the new dwelling to the site of the mobile home. The existing single access point from the road was therefore the sole access to both Cragside and the mobile home, and will continue to be the sole access point for both the new chalet bungalow and the mobile home.

8. The site of the mobile home is currently separated from the front part of the site by high evergreen hedges/trees, a close boarded fence and a metal gate.

9. The appellants state in separate statutory declarations that their father/father-in-law lived permanently in the mobile home as his sole residence (including with his wife until her death) until his death in March 2019. There are two letters from neighbours, including the occupier of Forest Gate, the next-door house to the south, that confirm that the mobile home was taken over and lived in by the appellants' father/father-in-law from 1999 or 2000. It is also said by the appellants that the father's brother lived in the mobile home from 1985, when it was bought and brought onto the site, until 2000 when the father started living in it. The appellants thus allege that it has been continuously occupied as an independent residential dwelling since 1985 until the date of the application, notwithstanding that Mr Paice senior died 6 months prior to the submission of the application.

10. I agree that this recent gap of occupation is irrelevant, simply because if the appellants' evidence is sufficient to demonstrate a period of 10 years continuous residential use of the mobile home prior to those 6 months, then that would fulfil the 10-year immunity period requirement. I also agree that this 6 months and any subsequent period of non-occupation up to the present day, does not constitute abandonment of any continuous residential use, subject of course to such a use being established as lawful.

11. However, the LPA's case lies in its contention that there has been no material change of use of the appeal site land because its use and occupation by both Mr Paice senior and his brother amounted to an incidental/ancillary use to the

[1] LPA Ref 19/00046 granted 14 March 2019

residential use of Cragside and its original plot by the wider Paice family. In other words, no new planning unit providing a separate independent residential use has been established, at least until relatively recently and certainly only for a period well under 10 years. I agree that the central issue in this case is whether a separate planning unit for the use of the mobile home as a separate independent dwelling has been created, and if so, when this occurred.

12. Paragraph 3.23 of the appellants' appeal statement is apposite in assessing this. It states: *"the land on which the mobile home is (and has long been) situated is accessed along a stretch of drive which is not connected with the use of Cragside"*. I disagree. As a matter of fact, there is and always was only one access into the site from the road. So, any vehicle or pedestrian gaining access to the mobile home would and still does have to traverse both the single entrance point to the site and the frontage of the dwelling before proceeding on the drive to the mobile home.

13. Secondly, paragraph 3.23 states: "the *mobile home lies on its own plot, which is physically distinct from Cragside owing to the strong mature hedgerows which separate the curtilage of Cragside from the curtilage of the mobile home"*. Whilst there may always have been mature hedgerows dividing these parts of the Cragside plot it has always been necessary to go through the appeal site to access the remaining two-thirds of the plot's rear garden. This is because the appeal site subdivides the frontage part of the plot (where the new dwelling is being built and Cragside was located) from the western rear part of this long east-west rectangular plot; it is impossible to access the rear, main part, of the plot without going through the appeal site.

14. Both these physical characteristics of the wider site are indicative of a single planning unit, certainly in the past when the wider Paice family owned the whole plot. The sale of the front part of the site to the person building the new chalet bungalow may well have altered this as acknowledged by the LPA, but that has only occurred in the last two years or so.

15. I note that the LPA prompted the appellants to supply evidence of the independent use of the appeal site prior to the determination of the application. They did not do so at the time and have still not done so as part of this appeal, which seems odd if they had or have such evidence. I am unaware of what internal facilities/services the mobile home contains since I could not gain access to it internally during my site visit, but I am assuming that it has its own foul drainage, water and electricity supply. I note that evidence has been submitted that shows the supply of water and electricity to the mobile home in 2016, but this is well within 10 years of the application submission date. Notwithstanding that, I am erring for the purposes of this decision under the assumption that the mobile home was capable of being lived in as an independent dwelling 10 years prior to the LDC application, as advanced by the appellants.

16. Nonetheless, I would have thought that a mother and son living on the same wider site and sharing the same vehicular and pedestrian entrance, would have a high degree of inter-dependence even though they may have slept in two different buildings/structures. For instance, it would seem very likely that the appellant's father helped maintain his grandmother's house and grounds especially during her latter years and that they ate together at least for some

of their meals. Again, this would indicate that the bungalow and the mobile home remained part of the same single residential planning unit.

17. Although the grandmother died in 2009 when the property was inherited by the appellant's father, it appears that the father's cousin continued to live there. Consequently, with no evidence to the contrary, the bungalow and mobile home were still together occupied by members of the wider Paice family. Consequently, the same or a similar inter-relationship between the cousins and the bungalow and mobile home would have been likely to subsist as had been the case between the father and grandmother.

18. I acknowledge the appellants' evidence that the mobile home was subject to separate Council tax demands from 1 April 2014. But Council Tax may be payable on some annexe type units within a dwelling's curtilage, so in itself this does not demonstrate an independent dwelling use. Even if it did, the evidence supplied does not demonstrate the establishment of an independent dwelling for a continuous 10-year period prior to the submission of the LDC application.

19. The appellants seek to disapply the application of *Uttlesford*[2] and *Whitehead*[3] to this case. However, for the reasons set out in paragraphs 5.3 to 5.8 of the LPA's appeal statement, I consider these judgements to be applicable, as is *Burdle*[4] as raised by the LPA. In particular, I agree with the LPA that because of the physical characteristics of the wider Cragsite site and the fact that the bungalow and the mobile home were both occupied by one wider family, either the mobile home was integral to the residential use of the wider Cragside site or it was incidental to such, as set out under Section 55(2) (f) or (d) of the Act.

20. I determine for the above reasons that insufficient evidence has been provided to demonstrate, on the balance of probabilities, that a material change of use has occurred under Section 55(1) to establish that the mobile home has been continuously used as a separate unit of residential accommodation independently from the main dwellinghouse for a period of at least 10 years prior to the date of the application.

21. For these reasons I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the occupation of the mobile home, and thus use of the land, as a separate unit of residential accommodation was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Nick Fagan

INSPECTOR

[2] *Uttlesford DC v SSE & White [1992] JPL 171*
[3] *Whitehead v SSE [1992] JPL 561*
[4] *Burdle & Williams v SSE & New Forest RDC [1972] 1 WLR 1207*