

Cumberland Council

Delegated Planning Application

Reference No: CLDP/2023/0006

Valid Date: 21 June 2023

Location: Hung Gill, Flimby, Maryport, Ca15 8RU

Applicant: Louise Lyon

Proposed: Certificate of lawful development for siting of a static caravan as a welfare unit ancillary to agricultural and equestrian uses

Recommendation: Grant

Site Description

The application site comprises part of an agricultural field located 1 mile to the south of Flimby. The wider site has a number of outstanding enforcement issues and 3 applications (including this application) have been submitted to regularise the breaches of planning control. The outstanding issues include a caravan which is the subject of this application, 2 storage containers (see Application Reference CLDE/2023/0004) and a horse arena that has recently been used as a dog paddock (Application Reference FUL/2023/0140). There are no listed buildings within, or in the vicinity of, the application site nor is it located within a conservation area. The application site is not subject to any landscape designations and is located wholly within Flood Zone 1.

Site History

Application Reference 2/2015/0124 - Prior approval of proposed change of use of agricultural building to dwelling.

Proposal

The application seeks a Certificate of Lawfulness for a Proposed Development in relation to the siting of a caravan for use as a welfare unit ancillary to the existing agricultural and equestrian uses of the land. The application is made under Section 192 of the Town and Country Planning Act 1990 (as amended).

Consultation Responses

N/A.

Duties

N/A.

Development Plan Policies

N/A.

Other Material Considerations

N/A.

Weighting

N/A.

Assessment

Section 192 of the Town and Country Planning Act 1990 enables any person to apply for a decision as to whether a proposed use of buildings or land, or operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes.

Section 192 (2) explains that “if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application”.

Development is 'lawful' if no enforcement action may be taken by the local planning authority. Occasionally, applications of this nature are submitted for works that do not constitute development, which is the case with this proposal.

The level of information included in an application for a lawful development certificate needs to be sufficient so that any future material change of use could be identified and established therefrom. This includes a clear description that is not ambiguous or confusing. The description for the application clearly states that the siting of a caravan on the site is for a welfare unit ancillary to the existing agricultural and equestrian uses and is not for residential purposes.

What Constitutes Development?

Section 55 of the Town and Country Planning Act (1990) states that:

"...subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land".

For clarification, the other provisions within Section 55 are not pertinent in this case to the definition of development. The Town and Country Planning Act (1990) does not specifically mention caravans or the control of caravan sites. As such, conventional caravans are not operational development due to their mobility and for the purposes of Section 55 is considered to be a chattel ancillary to the land on which it is sited. Therefore, the basis for planning permission being required rests on Section 55 (1) and whether a material change of use of the land will occur.

What is a Material Change of Use?

Paragraph 11 of the National Planning Practice Guidance confirms that:

"A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case".

Case law from R (Kensington and Chelsea RBC) v SSCLG [2016] EWHC 1785 (Admin) outlines the principles that should be considered when determining whether a change of use is material. These include:

1. A planning purpose is one which relates to the character of the use of land;
2. Whether there would be a material change in the use of land falling within the definition of “development” in Section 55 of the Town and Country Planning Act (1990) depends upon whether there would be a change in the character of the use of the land;
3. The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. The need for a land use, such as housing or a type of housing in a particular area, is a planning purpose which relates to the character of the use of land;
4. Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;
5. The issues of (2) and (4) above are issues of fact and degree for the decision maker and are only subject to challenge on public law grounds;
6. Whether or not a planning policy addresses a planning consequence of the loss of an existing use is relevant to, but not determinative of, an issue under (4) above.

As such, it is clear from the above that should the caravan be used for residential purposes, this would constitute the creation of a new planning unit and a material change of use.

Is the Development Lawful?

The caravan that is the subject of this application falls within the dimensions specified in the Caravan Sites and Control of Development Act (1960) amended under the Caravan Sites Act (1968). As such, the caravan is not considered to be operational development under Section 55 of the Town and Country Planning Act (1990).

Therefore, the main planning consideration is the use of the caravan and the land on which it is sited. If the caravan is used for residential purposes, this would constitute the creation of a new planning unit and a material change of use. This would not be lawful development. However, if the caravan is to be used ancillary to the primary use of the site (as a welfare unit), this does not constitute a material change of use of the land. In addition, the caravan is not considered to be “development” as defined by Section 55 of the Town and Country Planning Act (1990).

If the caravan is used in accordance with the description for this application (“siting of a static caravan as a welfare unit ancillary to agricultural and equestrian uses”), and not for residential purposes, no material change of use or operational development will

occur and it is considered to be lawful. As such, the Certificate of Lawfulness for a Proposed Development can be granted.

Conditions

Pro-active Statement / Notes to Applicant