



Appeal Decision

Site visit made on 4 July 2017

by D H Brier BA MA MRTPI

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

Decision date: 1 August 2017

Appeal Ref: APP/H1840/X/16/3159272

Caravan at Brookfields Farm, off Main Road, Cropthorne, Evesham

- 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 Ayley against the decision of Wychavon District Council.
 - The application Ref W16/00180/LUE, dated 13 January 2016, was refused by notice dated 4 August 2016.
 - 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 use of the site for a mobile home that is permanently lived in.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 17 July 2017

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Both the notice of refusal and the appeal give 10 June 2016 as the date of the application, but the application form is dated 13 January 2016. It may be that the difference in the dates is down to the process of validating the LDC application - the decision notice indicates that 10 June 2016 is when it was registered - but my view is that 13 January 2016 is the relevant date for the purpose of assessing lawfulness nonetheless. My decision will be made on this basis.
3. 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 LDC application, that is prior to 13 January 2006, and has continued actively throughout the subsequent 10 year period. The test for the evidence is the balance of probability and the Courts have held that in cases such as this the onus on proving it lies with the appellant.
4. The Council contend that what they refer to as a "steel and timber clad extension" attached to the mobile home currently on the land does not comply with the statutory definition of a 'caravan', whereas the appellant submits that the structure is a twin unit mobile home. Irrespective of the merits of the

parties' views on this point, it is not a matter that goes to the heart of the appeal before me. My decision will focus on the question posed by section 191(2) (a), namely whether the use in question is lawful because the time for enforcement action has expired.

Appeal

5. In essence, the appellant's case is based on the premise that there has been a mobile home on the site "*for the last 11 years*"¹, albeit no exact dates are given. It is also indicated that, initially, the mobile home was let to a tenant, and that the appellant has resided in it for the last 5 years.
6. By reference to aerial photographs submitted by the appellant and ones held by the Council, which date back to 2004 at least, the Council accept that on the balance of probability there has been a mobile home present on the land for more than the 10 year period.
7. On the face of it, this acceptance appears to lend strong support to the appellant's stance. However, the precise nature and duration of the occupancy of the mobile home in the past is far less clear - evidence in this respect is somewhat sparse. Apart from the appellant's aerial photographs and his reference to the last 5 years, his case relies upon a statutory declaration by a Mr Geoffrey Aldington. The declaration, dated 1 March 2016, notes that Mr Aldington worked as a gamekeeper at Brookfields Farm from 2004 to 2009 and that he still frequently walked and controlled vermin there. He goes on to say that "*I can confirm from my personal knowledge that the mobile home has been permanently occupied since 2005*"².
8. As the earliest date referred to by the appellant appears to be around 2011, this offers little assistance in establishing whether the use in question is lawful. Moreover, although he refers to the need for all year round 24 hour security at the site, it is not clear whether his occupancy of the caravan was permanent, intermittent, or casual. There is nothing that helps to shed any light on this. In particular, there are no documents linked to the appellant's claimed occupancy, for instance utility bills, Council Tax bills or electoral roll entries and the like which could have helped in this respect.
9. In a similar manner, quite how Mr Aldington purported to know that the mobile home was permanently occupied is not readily apparent. Nor, given that the declaration notes that he had worked at Brookfields since 2004, is the significance of the year 2005. As is the case with the appellant's claimed occupancy since 2011, there is no documentary evidence appertaining to the period before that. And, although reference is made to an arrangement whereby the mobile home was let to a tenant for free in exchange for his presence on site, no documentary evidence concerning this has been put forward. The relative paucity of relevant evidence makes the nature of the use in question very difficult to establish.
10. As the appellant has opted to pursue his appeal by means of written representations, this has precluded both his evidence and the contents of Mr Aldington's declaration from being tested by cross-examination. This diminishes the weight to be attached to what evidence there is, albeit the Council have not produced anything that directly contradicts it.

¹ Appeal statement dated 22 September 2016

² Mr Aldington's statutory declaration paragraph 6.

11. In the light of the foregoing, I am not satisfied that the evidence is sufficiently precise and unambiguous to justify the grant of a LDC on the basis of the balance of probability. The circumstances of this case are such that the burden of proof that lies with the appellant has not been discharged.
12. For the reasons given above, and having regard to all the other matters raised, I am satisfied that the Council's refusal to issue a LDC in respect of the use of the site for a mobile home that is permanently lived in at Brookfields Farm, off Main Road, Cropthorne, Evesham, was well-founded. I shall therefore exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D H Brier

Inspector