The Planning Inspectorate

Appeal Decision

Site visit made on 13 September 2017

by Chris Preston BA(Hons) BPl MRTPI

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

Decision date: 27 September 2017

Appeal Ref: APP/H1840/X/17/3173161
6 Torton Villas, Worcester Road, Low Hill, Hartlebury, Kidderminster DY11 7RT

- 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 Evelyn Smith against the decision of Wychavon District Council.
- The application Ref W/16/02122/LUE, dated 23 August 2016, was refused by notice dated 25 October 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 described on the application form as: Use of land as a residential caravan site for two families, with a total of 3 caravans including one static caravan/ mobile home.

Decision

1. The appeal is dismissed.

Main Issue

2. A Lawful Development Certificate (LDC) is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the development are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

3. The appellant seeks an LDC on the basis that the site has an existing lawful use as a residential caravan site for a total of three caravans including one static caravan. The basis of the appellant's case is that the use had continued for ten years or more prior to the date on which the application was submitted to the Council. That claim relates to Section 191(2)(a) of the Town and Country Planning Act (1990) (the Act) which states that uses of land are considered lawful at any time if no enforcement action may be taken against 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 terms of section 191(2) are related to section 171B(3) of the Act which identifies that no enforcement action may be taken in respect of certain breaches of planning control, which would include use as a caravan site, after the period of ten years beginning with the date of the breach.

5. The Planning Practice Guidance (PPG) makes clear that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

6. In this case, very little information has been submitted by the appellant in support of the appeal. The application form submitted to the Council suggested that the use as a residential caravan site began in 2000 and that it was continuing at the time the application was made. Within her appeal statement the appellant states that there have been caravans on the site since 2001 and that she and her husband lived in a caravan on site whilst the house – No. 6 Torton Villas – was being renovated. The precise dates of that occupation are not provided. She also states that her daughter has lived at the site in a caravan for over ten years, that her mother lived in a caravan from 2001 until she passed away in December 2013, and that her grand-daughter has lived in a caravan at the site for the last three years.

7. The statement is not a statutory declaration and that limits the weight I can attach to it. In addition, no other documentary evidence has been provided by the appellant to support her position. The Council has provided aerial photographs from the years 2005, 2008 and 2012. Whilst those photographs depict what appear to be caravans on the site those caravans are shown to be in different locations across the site in the different years, with the exception of a unit which appears to have been in a constant position on the eastern boundary. Given that caravans appear to have moved position it is not clear whether they were occupied continuously or whether they came and went from the site such that any use was transient. Moreover, whilst the appellant has stated that certain family members lived at the site in the absence of any corroborative information it is not clear whether they lived there continuously or whether they came and went over the specified period.

8. Correspondence between the Council's Planning Officer and the Council Tax department indicates that Council Tax was paid for a mobile home from 2001 onwards, for another caravan from 2008 onwards and for two further caravans from 2013. That would not suggest that the site has been used continuously over a period of ten years for three residential caravans, as suggested by the appellant. In addition, the fact that Council Tax was paid does not, of itself, indicate that a unit was occupied over a particular period; Council Tax could have been paid whilst residents were living elsewhere.

9. There is also a lack of clarity between the use of the mobile unit and other caravans and the dwelling at 6 Torton Villas. The site is what appears to be the side garden of the dwelling. It is possible that a unit could have been occupied in a manner that was ancillary to the use of the dwelling, for example if a relative slept within the unit but took meals and used other facilities in the

house. The appellant notes that she and her husband lived in a caravan whilst the house was being renovated. That would suggest a direct link to the occupation of the dwelling and it is not clear what degree they relied upon facilities in the dwelling during that period. In other words, if a particular unit was used in a manner that was ancillary to the occupation and use of the adjacent dwellinghouse it would not necessarily amount to a material change of use. In the absence of further details it is very difficult to form a conclusion on that point.

10. All in all, there are significant uncertainties surrounding the use of the site in relation to the number of caravans that were stationed over the period from 2000 onwards, who lived in which unit, whether that use was transient and the degree to which any use was related to the residential use at the adjacent dwelling. In view of those ambiguities, and considering the onus rests with the appellant to demonstrate her case, I am not satisfied, on the balance of probabilities, that the information before is sufficient to demonstrate that the use of the land as a caravan site for the stationing of three residential caravans was lawful at the time the application was made.

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of land as a residential caravan site for two families, with a total of 3 caravans including one static caravan/ mobile home, 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.

Chris Preston

INSPECTOR