
Appeal Decision

by Daniel Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2018

Appeal Ref: APP/H1840/X/17/3186706
Manor Farm, Hadzor Lane, Hadzor WR9 7DR

- 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 and Mrs Watton against the decision of Wychavon District Council.
 - The application Ref 17/01595/CLPU, dated 1 August 2017, was refused by notice dated 20 September 2017.
 - The application was made under section 192(1) (a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is the occupation of the holiday chalet by an individual family for up to 10 months in any one year.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Lawful Development Certificate application includes a supporting statement dated August 2017 which explains what is proposed. It states that *"a couple has shown interest in purchasing one of the holiday chalets off the applicants, to have as their holiday home. Prior to completing the purchase, they want to be assured that they could occupy the holiday chalet for up to 10 months in any year, with a break in between (i.e. occupy for up to 5 months, move out for 2 months to their main residence, then occupy again for up to 5 months)"*. I have taken the description of the proposed use from the Council's refusal notice as this reflects the above: the appellants have agreed this wording.

Preliminary Matters and Main Issue

3. 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 proposed use are not relevant to the determination of the appeal.
4. Planning permission was approved on 6 December 2013 (Ref W/13/01772/CU) for the demolition of existing buildings and the change of use of the land for the erection of 3 holiday chalets. This was subject to a number of planning conditions including condition No 02 which reads *"the use of the holiday let unit*

hereby approved shall be restricted to short-term holiday purposes only and shall not be occupied at any time as permanent residential accommodation". The LDC application seeks confirmation that occupation of one of the holiday chalets by a family for a period of up to 10 months per annum would not be in breach of condition No 02, and hence would not require planning permission, in so far that the proposed occupation of one of the holiday let chalets would amount to a use for "*short-term holiday purposes*".

5. The main issue is therefore whether the Council's decision to refuse to grant a LDC was well founded with particular regard as to whether it has been demonstrated that the proposed use would not be in breach of condition No 02 of planning permission W/13/01772/CU and hence that planning permission would not be required.

Reasons

6. Planning condition 02 of planning permission W/13/01772/CU does not define "*short-term holiday purposes*". Consequently, it is a matter of planning judgment in terms of whether the proposed occupation of the chalet for up to ten months per annum by one family amounts to a use for short term holiday purposes. I consider that a sensible interpretation of the condition is that none of the chalets can be occupied by a person(s) who spends more time in them than they would do in their main or principal residence.
7. In this case, the proposal would result in the family spending up to ten months of the year in the holiday let and hence as a little as two months in their existing main residence. Consequently, and in terms of the period of occupation, the proposal would actually result in a chalet being used as the family's main residence. I do not consider that such a period of occupation could reasonably or sensibly be considered as being "*short-term*" in respect of applying condition No 02 of planning permission W/13/01772/CU.
8. In addition to the above, and given up to ten months occupation, the proposal would not amount to a use for "*holiday purposes*". Instead, as noted above, the use of the chalet for up to ten months a year would be akin to use by the family as their principal or main residence. Furthermore, it is understood that the chalet would be "*purchased*" and used by the family for up to ten months of the year. This would mean that for up to ten months of the year the chalet was not being used as a "*holiday let*", but instead it would be akin to a second home. In this regard, the proposal would also be in breach of planning condition No 02 of planning permission W/13/01772/CU.
9. For the collective reasons outlined above, I conclude that the proposed use of the chalet would be in breach of condition No 02 of planning permission W/13/01772/CU. Consequently, planning permission would be required for the proposal. I acknowledge that the appellants do not consider that the planning condition is enforceable and that they feel that the planning condition could be worded differently¹. However, the LDC appeal is not the right mechanism for considering whether or not to vary or delete the planning condition. This is a matter that would need to be discussed separately with the Council including the possibility of submitting a planning application under Section 73 of the Act.

¹ E.g. Planning condition 12 of planning permission Ref W/16/02211/CU

Conclusion

10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use in respect of the occupation of the holiday chalet by an individual family for up to 10 months in any one year 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.

D Hartley

INSPECTOR