
Appeal Decision

Site visit made on 2 October 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary

Decision date: 18 October 2019

Appeal Ref: APP/P1045/X/19/3220971

Knockerdown Inn, Knockerdown, Ashbourne DE6 1NQ

- 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 B Fitzsimmons against the decision of Derbyshire Dales District Council.
 - The application Ref 18/00973/CLEUD, dated 29 August 2018, was refused by notice dated 31 October 2018.
 - 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 siting of a caravan for staff accommodation.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to issue a LDC was well-founded. This will turn on whether the appellant has proved on the balance of probabilities that the use of the land for the siting of a caravan for staff accommodation commenced on or before 29 August 2008 and that the use then continued without significant interruption for 10 years.

Reasons

3. Where a LDC is sought, the onus of proof is on the appellant and the standard of proof is the balance of probabilities. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, a LDC should be granted.
4. The appeal site comprises an area of land adjacent to the car park associated with the adjacent bar/ restaurant, holiday accommodation and holiday caravan site with associated facilities. It is situated in open countryside and access is gained off the adjacent B5035 via a shared access which serves the public house. At the time of my site visit I noted that the site in question is occupied by a large caravan with a small garden area and septic tanks which I understand to be associated with the other uses on the wider site.
5. The application for a LDC was accompanied by a range of supporting evidence, including a sworn affidavit by Bronya Fitzsimmons, statements from employees who occupied the caravan and aerial photographs from 2007 and 2017. The

affidavit states that a caravan has been sited on the site for at least eighteen years and during that time it has been used as residential accommodation for staff working at the property. However, I have noted that the declaration does not specify continuous use during the period since the material date.

6. The statements of employees are not witnessed and the dates of occupancy are imprecise referring only to years when they occupied the caravan rather than specific dates. Also, there are gaps in the periods of occupancy given. As stated by the appellant, the evidence demonstrates regular occupancy during the ten year period. However; a use can only become lawful if it continued throughout the ten year period, to the extent that the local planning authority could have taken enforcement action at any time¹. It is my opinion that there have been periods during the relevant period when the Council could not have actually taken enforcement action because the property in question was not being occupied as staff accommodation. I understand that it can be difficult to contact former members of staff, but the lack of clear evidence with regard to occupancy dates and the lack of detail regarding the precise nature of occupancy for a continual ten year period is of concern.
7. The aerial photographs dated 2007 and 2017 appear to show a caravan on the appeal site. On close examination of the evidence and my site observations it may well be the same caravan that is on site at present. Irrespective of whether or not that is the case, the photographs do not themselves demonstrate the continual use of the caravan for staff accommodation, but merely the presence of a caravan on the land.
8. In this case I find that the appellant has not shown, on the balance of probabilities, that the use of the land for the siting of a caravan for staff accommodation commenced on or before 29 August 2008 and that the use then continued without significant interruption for 10 years.

Conclusion

9. 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 siting of a caravan for staff 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.

A A Phillips

INSPECTOR

¹ R v Thanet DC ex parte Tapp [2001] EWCA Civ 559