



Appeal Decision

Site visit made on 28 January 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 12 May 2020

Appeal Ref: APP/K1128/X/19/3223072

Spring House, Dartington, Totnes, TQ9 6EU

- 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 Christopher and Julie Parsons against the decision of South Hams District Council.
 - The application Ref 3576/18/CLE, dated 31 October 2018, was refused by notice dated 21 December 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 a mixed use of land for ancillary residential uses and parking of vehicles, storage of plant, machinery and materials in connection with the owners' landscaping business and training enterprise.
 - **Summary of decision:** Appeal dismissed.
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Procedural matters

1. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for an LDC. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
2. The appellant states that he wishes to sell the appeal site as a house plot but there are highway authority concerns regarding visibility spays from the private drive onto the A385. Whilst this may be the case, the appellant's aspirations for the site are not relevant to this appeal.

Main issue

3. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

The site

4. The appeal site is located to the south-east of a residential property known as Spring House. The site is at a lower level between the curtilage of Spring House and a watercourse. The site is accessed via a private drive from the highway.
5. At the time of my site visit, the site was largely under grass with a small area of gravel at the end of the access track. There were a number of substantial logs and inconsequential miscellaneous items on the site, including a few trays

of flowers being loaded into a van. There was little evidence to indicate that the site had been used for the storage and parking purposes claimed.

Reasons

6. It is necessary for the appellant to demonstrate on the balance of probability that the change of use for which an LDC is sought has existed for a period of 10 years or more prior to the date of the application, which in this case is 31st October 2018, in order to achieve immunity from enforcement action for any breach of planning control. The onus of proof rests with the appellant who is responsible for providing sufficient information to support the application.
7. The appellants state that the land, known as the lower yard, was first used as part of a landscaping business in 2005. It acted as an overflow for the upper yard which was the main yard for the business. The upper yard has since been redeveloped with a dwelling. From 2007 the area was used for storing plant, machinery, scaffolding equipment and material storage such as walling stone and sand. Two lorries associated with the business were parked overnight. The landscaping business was wound down in 2009 and the upper yard sold in 2013 but the appeal site continued to be used for non-residential parking and storage purposes when there is insufficient space on another site known as the Landworks site on the Dartington Estate. Since then, employee parking and storage has continued as part of the Landworks project, including use as a training area for bushcraft and stonework. It is claimed that a mixed residential and commercial use has taken place over a period of 10 years although it is accepted that the use may not have been intensive over the whole lower site but the use has been constant and never abandoned.
8. No evidence has been submitted to indicate how the site has been used for ancillary residential facilities although the appellants have indicated that it was used for the rearing of pigs in 2003/04.
9. Three employees have confirmed that over varying 5 year periods between 2003 and 2010 the lower site has been used for the parking of lorries, vans, dumper truck and for the storage of machinery, paving, stone and scaffolding. Two trainee/employees confirm the regular use by the appellant's company for storage, parking and chainsaw cutting and practice over different times since 2014. Copies of various invoices, receipts and accounts from 2004 to 2013 have been submitted but these appear to relate generally to the appellant's business rather than to the use of the appeal site.
10. The four Google images of the site referred to by the Council do not support the appellant's assertions about the use of the appeal site. The 2006 image shows the site as rough land with no features other than a tree with a large canopy. The 2010 image shows some form of structure which the Council speculates could be a storage building and with the large tree removed. The 2017 image shows the same structure, a vehicle and small piles of unidentifiable materials. The June 2018 photo shows the structure gone and the site virtually clear of any features.
11. I note that the Design and Access Statement submitted in connection with outline planning application 14/2048/12/O identifies the land north of Spring House as the parking/storage area for the appellant's business. The business closed in 2013 and in 2014/15 there was no trading activity of the business such that the need for a site would not have existed.

12. Whilst the evidence does support some use of the appeal site for commercial parking and storage over a period of time, and that the use has changed towards training purposes more recently, such uses have been limited in extent and intermittent as borne out by the Google images and other evidence. This lack of continuous use indicates that at certain times, there would not have been sufficient evidence of a material change of use of the site for the Council to have taken enforcement action, had they considered it expedient to do so. Indeed, this conclusion is borne out by the appellant acknowledging that the appeal site was only used when there was insufficient space at the Landworks site.
13. The Council considers the physical characteristics of the site would limit the use of the whole of the site for the claimed uses and I share this assessment.
14. The evidence relating to the use of the whole site for the purposes claimed for the relevant 10 years to establish immunity from enforcement action is extremely limited. The appellant has not demonstrated on the balance of probability that the claimed uses have existed on the appeal site for the necessary 10 or more years prior to the application for an LDC.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a lawful development certificate in respect of a mixed use of land for ancillary residential uses and parking of vehicles, storage of plant, machinery and materials in connection with the owners' landscaping business and training enterprise.

Formal decision

16. The appeal is dismissed.

P N Jarratt

INSPECTOR