



Appeal Decision

Site visit made on 10 September 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 18 September 2020

Appeal Ref: APP/U1105/X/20/3250786

Land at Thorne Park Family Golf Centre, Salcombe Regis, Devon EX10 0PA

- 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 M Burroughs against the decision of East Devon District Council.
 - The application Ref 19/0358/CPE, dated 18 February 2019, was refused by notice dated 19 February 2020.
 - 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 use of a caravan as an independent dwelling.
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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 certificate of lawfulness for the use of the caravan as a dwelling was well founded.
3. Under s191(1)(a) of the 1990 Act, any person who wishes to ascertain whether any existing use of buildings or other land is lawful may make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2)(a) of the 1990 Act specifies that for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of 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 time limit relevant for taking enforcement action under s171B(3) of the 1990 Act regarding the use of buildings or other land is the end of 10 years beginning with the date of the breach. The ground under which the appellant applied for the LDC was that the use began more than 10 years before the date of the application.
5. The appellant therefore needs to show, on the balance of probability, that the occupation of the caravan, and thus use of the land, for residential purposes has occurred for a continuous period of at least 10 years by the date of the application for the LDC, which was 11 February 2019. Consequently, the evidence to support that claim needs to date back to at least 11 February 2009. The burden to make out the case rests with the appellant.

Reasons

6. There is no dispute between the main parties that the caravan, which is located near to the site's entrance and the petanque court, has been kept on the site since 2003. The appellant claims in his statutory declaration dated 4 February 2019 that he has lived in the caravan since June 2003, apart from during the summer months between 2003 and 2018 when Mr and Mrs Deroos, the Dutch couple who originally brought the caravan here, stayed in it.
7. However, the appellant's declaration itself contains some anomalies. Its first line gives a different address to the caravan as his place of residence, or at least his postal address. This implies, at the very least, that he did not live in the caravan continuously for a period of 10 years prior to the submission of the application. He also states that the dwelling is "*..used by us...*" although I'm unclear who else is alleged to have used it, especially since he states that he has never co-habited with anyone. I acknowledge that the appellant's declaration that he has lived in the caravan continuously since 2003 is corroborated by a friend, a regular user of the golf facilities on the wider site.
8. However, there is a range of contrary evidence including from the appellant's own sister. She points out in a statutory declaration that her brother lived continuously at his childhood home, a nearby farm lived in by their parents until August 2017, when he began living in a wooden pod (not the caravan) at Thorne Golf Park. She says in a letter responding to the original application that the appellant only moved out of the farm on 4 August 2017, when their father became seriously ill. She also states in her declaration that she visited the appeal site in 2017, 2018 and 2019 and saw no evidence of anyone living in the caravan, which looked abandoned and had no water, drainage or electricity services attached to it. I acknowledge the appellant's final comments that his wider family has become embroiled in a dispute since his father died in 2017, and that since his sister does not live locally, she has no knowledge of his day to day movements.
9. But his sister's version of events is essentially corroborated by the Managing Partner of Thorn Coachworks located next door at Thorn Business Park, who only acknowledges the caravan's use by the Dutch couple for 2-3 weeks a year. The owner of Salcombe Regis Camping and Caravan Park, located down the road just west of the site, says that the appellant has not lived in the caravan but is living elsewhere on the wider site. He says that he regularly passes the site, including at night, and has never seen any lights on in the caravan.
10. The substantive contrary evidence casts significant doubt on the appellant's case. His evidence is insufficient to demonstrate, on the balance of probabilities, that the caravan has been continuously used for residential purposes for a period of at least 10 years prior to the date of the application.
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 occupation of the caravan, and thus use of the land, for residential purposes 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.

Nick Fagan

INSPECTOR