



Appeal Decision

Site visit made on 22 September 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 30 October 2020

Appeal Ref: APP/K2230/X/20/3246559

Croft View, White Horse Lane, Meopham, Gravesend DA13 0UE

- 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.
 - The appeal is made by Mr Chris Pearson against the decision of Gravesham Borough Council.
 - The application Ref 20181134 is dated 29 October 2018.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as *'Mobile Home.'*
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application form, under 'Description of Use, Operation or Activity' has been completed stating "C2 – Residential Institutions". This is clearly not the case and does not correspond with the stated use for which a lawful development certificate (LDC) is sought which, on the application form, is specified as a "mobile home".

Background

3. The mobile home, measuring some 11.2m x 3.8m, located within the Croft View site is known as 'Timber Lodge', and is used as a residential unit of occupation. At my site visit I inspected its facilities and can confirm that it comprises habitable accommodation, albeit basic in form. The appellant claims he has lived there since 2014, prior to which he lived in another portable home on the land. The red line on the site plan submitted along with the application for the LDC effectively rings, and is limited to, the Timber Lodge footprint.
4. The wider site known as 'Croft View' also accommodates a two-storey dwelling, and a block and render building adjacent to the mobile home known as 'Pine Lodge', with a hard-surfaced yard area separating all three elements. No evidence has been adduced by the appellant as to the actual mobility – the moveability of the wooden structure from the site upon which it has been erected – or the 'permanence' of Timber Lodge. Nonetheless, the Council has provided a series of photographs, one of which, would clearly suggest that it is a mobile home. In the circumstances, I am treating the appeal in accordance with the application made; that of a mobile home constituting a use of the land

rather than operational development. Here, I am guided by the judgement of *Carter v SSE* [1991] JPL 131 where it was accepted that the stationing of a mobile home without wheels, which satisfied the accepted definition of a caravan, would not amount to a building operation.

5. In view of the above S171B (3) of the 1990 Act as amended says that where there has been a breach of planning control, not involving the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Here, given that the application for the LDC was made on 29 October 2018, the appellant must successfully demonstrate that the breach of control commenced ten years before, ie prior to 29 October 2008 (hereinafter referred to as "*the material date*") and has continued since.
6. In an appeal under s195 of the 1990 Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of that applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

7. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 and, in this connection, whether the Council's decision was well founded.

Reasons

8. The appellant has provided evidence in the form of a Supporting Statement saying that he moved into an 'Accolade' portable home at the site in 1999, taking over from a Mr L Patent who had lived there since 1997. Mr Patent also wrote a letter dated 29 October 2018 in support of the application, although it is rather scant on detail. His letter confirms that he lived in the mobile home, where Pine Lodge is now sited, between 1997 and 1999, being a tenant of a Mr Jeremy, following which the appellant then moved into the mobile home. He adds that, following this, Mr & Mrs Pearson (presumably the appellant and his wife) purchased the mobile home from Mr Jeremy and took up residence. Although Mr Patent makes no further reference to dates the appellant's Statement indicates that, in 2001 he purchased the 'Sunseeker Accolade' and, subsequently in 2014, he purchased Timber lodge which was brought onto the land; since which time he has lived there.
9. The Council has set out information from its Revenues department which was entered following a visit to Croft View from the electoral register canvasser who queried whether there was a second residential use at the site. Since it is recorded that the appellant has liability for an 'annexe' it would appear that this is a reference to Timber Lodge. However, there is also an entry indicating that, between 2003/04 and April 2015, the appellant lived nearby at 24 Timber Bank, Vigo. Only since approximately October 2015 has he been registered at the Croft View annexe.
10. The appellant has provided a letter dated 26 October 2018 from Mrs C P Miller, under the letter heading of 'The Greyhound Trust' – the organisation has apparently operated from the Croft View dwelling since 1995 and purchased

- the whole site at auction in November 2018 – which says that, for the past 26 years, there has always been a mobile home where Pine Lodge is located. This is seemingly consistent with the appellant's declaration on his application form, and also Mr Patent's account of events.
11. However, a second letter from the Trust's Chief Executive dated 1 November 2019 says that the organisation does not support the application made. Firstly, it is said that the Greyhound Trust, instead, is the sole owner of the Croft View site, although the appellant, on the application form, declares that his interest in the 'land' is as its owner. I would imagine, though, that this is due to the appellant's claim that he owns Timber Lodge itself. Importantly, although the letter is redacted it suggests that it was only when the appellant sold his house in Vigo that he purchased Timber lodge and moved it onto the land. This would tend to corroborate the Council's records.
 12. In *Ravensdale Ltd v SSCLG* [2016] EWHC 2374 (Admin) the High Court held that an appellant seeking to make out a lawful use must take care that sufficient evidence is provided which meets the balance of probabilities that there has been a continuous use for the relevant immunity period. It was not irrational for the Inspector to conclude that the sparse nature of the declarations and the "patchy" evidence of lettings was insufficient to satisfy the onus of proof. There is no general duty on a decision-maker when dealing with lawful use applications and appeals to explain what evidence might have satisfied him, or her, as opposed to making a decision on the basis of the evidence provided.
 13. In this particular instance, whilst it would seem that a mobile home has been present on the land for a significant period – indeed, for many years prior to the material date – there is no compelling evidence to suggest whether it was lived in throughout the relevant period or, if occupied, the manner of occupation. From the evidence before me I have no reason to doubt that the appellant moved into the mobile home, positioned where Pine Lodge is now sited, in 1999. Nonetheless, save for him purchasing Timber Lodge and moving it onto the land in 2014, and apparently living there subsequently, I am particularly concerned as to whether, from 2001, when he purchased the 'Sunseeker Accolade' mobile home, up until 2014, it was occupied for residential purposes. It might well have been sited on the land but it has not been made clear, with sufficient evidence adduced, to show it was continuously lived in.
 14. With the appellant's account vaguely stating "*The Accolade provided over thirteen years of residential living at Croft View...*" I find the supporting evidence as neither sufficiently precise nor unambiguous. The Council tax records which show that the appellant lived at a different address between 2003/04 and April 2015 only adds to this. Moreover, although the appellant will have been aware of the Council's case report during the appeal process, he chose not to comment on the discrepancies highlighted by the authority. Accordingly, in the absence of any clarification to rebut the Council's case and add support the appeal, my doubts are reinforced.
 15. On the basis of the appellant's evidence before me I am not convinced that its extent is sufficient to show that the use as claimed commenced before the material date and has continued on an uninterrupted basis since. The onus is on the appellant to demonstrate, on the balance of probability, that, at the

date of the application, the use had acquired lawfulness due to its immunity from planning enforcement action. In essence, I find that the burden of proof has not been satisfactorily discharged in this instance.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

Timothy C King

INSPECTOR