The Planning Inspectorate

Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2021

Appeal Ref: APP/L2250/X/20/3256942
2 Hope Lane, St Marys-in the-Marsh, Kent TN28 8TP

- 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 Miss Carol Chawner against the decision of Folkstone & Hythe District Council.
- The application, Ref Y19/0246/FH, dated 24 February 2019, was refused by notice dated 24 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 existing use of land for stationing a caravan for residential purposes.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as a decision can be reached on the papers. All the information needed is included with the application and appeal documents.

3. The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

4. Government advice in the Planning Practice Guidance is that a Lawful Development Certificate (LDC) application needs to describe precisely what is being applied for. In cases relating to an existing use the Secretary of State has the power[1] to modify the description of the development.

5. In this case the appellant has answered Question 8 on the application form, which asks "What is the existing site use(s) for which the certificate of lawfulness is sought?", as follows:

   - "This land is approximately 4 acres comprising 2 fenced fields and a fenced area where the caravan is sited as my second home. Adjacent to three

[1] section 191(4) of the Town and Country Planning Act 1990

stables and a hay store. There is a water supply to the caravan and stables. Water supply also to the two fields."

The Council changed this to "A lawful development certificate (existing) is sought in respect of the use of a caravan as living accommodation". The appellant's description, together with other information submitted with the application and the appeal lead me to conclude that the existing use is best described succinctly as I have set out above in the last bullet point.

6. Although the appellant refers to the residential use as a "second home" within the application form, it is clear from her own subsequent letters, the letters from her legal trustee and other material, that she claims to live on the site all the time.[2] I shall proceed on the basis of this modified description as it is considered that it best reflects what the appellant seeks. There would be no injustice caused to either party by my doing so, for the reasons given.

7. It was clear from the appellant's submissions that she had not included with her appeal all the information that was before the Council. The missing documents have not been submitted even though the appellant was given an opportunity to rectify the matter. Instead, she sent a copy of a Council Tax record detailing second home discount and single occupancy discount for the period 14 November 2011 until 31 October 2016. It is the appellant's responsibility to make her case and I shall therefore proceed on the basis of all the information that is now before me.

Main Issue

8. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded. That turns on whether the appellant can show, on the balance of probabilities, that:

(i) There was a material change of use of the land to site a caravan for residential use; and

(ii) That the use has continued without material interruption thereafter so as to be immune from enforcement action.

Reasons

9. The appeal site lies within a rural area and comprises a roughly rectangular parcel of land laid out as two fields. Within one field there is a section fenced off which contains the caravan, some stables, a tack room and a hay store.

10. A certificate of lawful use or development is not a planning permission. Its purpose is to enable owners to ascertain whether specific uses, operations or other activities are, or would be, lawful. Lawfulness is equated with immunity from enforcement action (section 191(2) of the Act). The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority.

[2] Appellant's letter dated 28 April 2020 "I have to live with my rescued ponies and greyhounds all of which need constant care...Injured wildlife has been brought to my caravan as I am always in... There is no wildlife sanctuary on Romney Marsh where I live in Hope Lane." Legal trustee's letter dated 28 April 2020 "She... lives alone in her caravan at 2 Hope Lane... It is obvious that she had lived at the caravan at 2 Hope Lane for over 10 years."

11. The burden of proof regarding decisive matters of fact rests on the appellant. She has asserted that the caravan she owns has been stationed on the land and used for residential purposes and that this is lawful. This is because the use of land as a caravan site for residential purposes began more than ten years before the date of the LDC application. This would make 24 February 2009 as the relevant date for considering the lawfulness of the use. She must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion.

12. Subsection 191(2)(b) of the Act is met here as there are no enforcement notices in force in respect of the use. With regard to section 191(2)(a) of the Act, the gist of the appellant's case is, in addition to the Council Tax information sent after the appeal was submitted, as follows:

- The application form states that the caravan has been on the site since 1996;
- The accompanying letter to the appeal states that the caravan was placed on the land in 1995 by the previous owner Mrs Lydia Escot;
- A subsequent owner, Mr Tony Windsor, states that the caravan was placed on the land by him, about 1996;
- The appellant states that Mr Windsor purchased the site in 2003 and she began renting the site and the old caravan from him in 2004;
- Mr Windsor states the appellant lived in the caravan in 2006 and that she lived there in 2008 after she purchased the site from him in 2008;
- At some point the old caravan was replaced but the appellant does not say when other than she needed to do so as she lived there with her rescued ponies and greyhounds "all of which need constant care"; and
- A neighbour in Hope Lane confirms that there was a caravan on site before 2008 and that the appellant moved into the caravan in 2008.

Assessment

13. Although the appellant states the first caravan was placed on the land in either 1995 or 1996 and Mr Windsor says it was 1996, it was not until 2004 that there is any mention by the appellant of it being occupied for residential purposes. I find there is some inconsistency around this date as Mr Windsor states it was 2006 when residential use began and Mr Smith says it was 2008. It would also appear that the appellant herself is unclear when the use began as within the application form, as opposed to her appeal letter, she states "I have lived in the caravan as my second home since 2008." As the appellant states she replaced the caravan, I find it is probable that she may have meant she lived in the first caravan from either 2004 or 2006 and that she began using the replacement caravan in 2008.

14. However, all of this is contradicted by the Council's own aerial photographs and a Google Street View image. Whilst they are not evidence of use and only capture the appearance of the site on one day, nevertheless they assist in the assessment of the appellant's case. The Council state that at present there is a static caravan on the site. The Google image is dated March 2009 and shows a touring caravan on the site. The aerial photographs are dated 2013, 2015 and

2018 and they appear to show a static caravan on the site. Furthermore, the aerial photographs from 2006 and 2008 do not show any sort of caravan on the site at all. As such, it has not been clearly demonstrated when the appellant's residential use began, whether it was in 2004 or 2006, as claimed, or that it began in 2008, as also claimed, in the "replaced" caravan. This is because there was no touring caravan shown in the earlier aerial photographs from 2006 and 2008 and the Google image shows a tourer on site in 2009.

15. The appellant comments on the aerial photographs but does not specify a date. She states that "after the storm" the caravan was blown onto Mr Windsor's land but was reinstated in a few days. This, however, does not clarify when the use began.

16. Other than the two letters from Mr Windsor and Mr Smith, there is no other documentary evidence from the appellant, with this appeal, to demonstrate that the residential use has continued uninterrupted for ten years. For example, based on what the appellant states, there are no documents from when the appellant was a tenant, from when she bought the site, from when she acquired the replacement caravan. There are also no pension statements, and no copy of a driving licence, for instance, which would show the appeal site as her address. The Council also confirm that there is no planning history in relation to the site.

17. The appellant claims to pay Council Tax, which would support her residential use but the details she has submitted do not contain an address. Her claim is contradicted by the Council who confirm that they have no records of Council Tax being paid by the appellant in respect of the appeal site. Their records show that she is registered to pay Council Tax at a property in Dymchurch and, on the basis of the information before me, this would appear to be her son's address.

18. Although not before me, the Council considered the evidence of a utility supplier. It would appear that the appellant has had an account since November 2008 to supply water to the site. This supports her position that she was using the site from that date but does not necessarily indicate that she was using the caravan for residential purposes. The Council also had sight of the appellant's affidavit and a letter from another neighbour but it is my view, based on the Council summary of these documents in the officer report, that they do not add anything further to the appellant's case.

19. The appellant submits other information about her life, such as her many years of work with rescue greyhounds and other animals and wildlife. She also submits that she has planted native trees and hedgerows and created a wildlife habitat but I find that her charity work and actions do not add substantially to the lawfulness of her case. In addition, the appellant's legal trustee has made certain remarks, which the Council deny, and which I also find adds little to the case before me.

20. The Council's Final Comments enclose a copy of a redacted email from a local resident in which it is stated that the LDC application included a letter of support from them. However, the email confirms that the resident did not write such a letter and the Council suggest that this casts doubt on the appellant's claims. As I have not been provided with the address of the resident, only limited weight can be attributed to this submission.

21. The appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. The onus of proof however is firmly on her to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate. Overall, I find the appellant's evidence, on the balance of probabilities, does not meet this requirement, for the reasons given. My conclusion is therefore that the appellant has failed to show that the existing use of land for stationing a caravan for residential purposes is lawful and that it has continued, without material interruption, for a period of 10 years, before the date of the application so as to be immune from enforcement.

22. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Conclusion

23. 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 existing use of land for stationing a caravan 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.

D Fleming

INSPECTOR