



Appeal Decision

Site visit made on 21 June 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Appeal Ref: APP/Q1153/X/21/3270453

Tavyside Models, 11A Mount Tavy Road, Tavistock PL19 9JB

- 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 Rock Lezmore against the decision of West Devon Borough Council.
 - The application Ref 2068/20/CLE, dated 8 July 2020, was refused by notice dated 18 December 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 outbuilding known as Tayside [sic] models was, to our knowledge, erected over 40 years ago and has been used as a model railway retail shop, A1 classification.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have used the description of the use for which a certificate is sought that was given in the application form in my header, above, and conclusion, below. However, for the sake of brevity, I have referred to this as 'shop' or 'retail' use in the body of the decision.
3. The evidence clearly put forward by both parties shows that 'Tayside' in the description of development provided on the application form, should have read 'Tavyside'. I have used the latter in my decision letter.
4. The Appellant in his appeal form, and the Council in its Questionnaire, said that there was no need to enter the property as it could be seen from public vantage points. On this basis, I undertook an unaccompanied site visit. It was apparent, from the descriptions of the property in the submissions and photographs submitted by the Appellant, which property the appeal referred to. However, as no location plan had been submitted with the documents when I visited the site, I subsequently asked the Council for a copy of the plan it had used in its determination of the application. As this confirmed that the property that I visited was the subject of the appeal, I did not need to revisit the site. Undertaking my visit on an unaccompanied basis did not prejudice either party.

Reasons

5. When a certificate of lawfulness is sought, the burden of proof lies with the appellant, who needs to prove their case on the balance of probability. Here, it

- is for the Appellant to show that the site was used as a shop for at least 10 years and that, at the time of the application being made, this use had not been lost.
6. The appeal site comprises a detached, single storey building that is set back from Mount Tavy Road. It has a grassed area to its front, between it and the road, whilst it backs onto the River Tavy. It lies between residential properties. The bungalow to the west is in the ownership of the Appellant and, from the evidence, the two have been in a single ownership.
 7. The Appellant's case is based on his assertion that the site has been built for more than 50 years and used as a model railway shop, trading as 'Tavyside Models', for some 30 years. In the light of this, he was surprised that the Council refused the application.
 8. Planning permission¹ was granted in 1983 to change the use of the appeal site from a store to a sales area for model railway equipment and museum. That the site was put to a retail use for the sale of model railway parts is accepted by the Council. Its position is that there is insufficient evidence to show that, on the balance of probability, this was carried on for 10 years and not thereafter lost.
 9. The Appellant has submitted various pieces of evidence in respect of the business rating of the site. He says that the business paid non-commercial rates for more than 20 years. A screenshot of an email from a Customer Services Officer '@swdevon.gov.uk' showed its rateable values being described as 'Shops' between 1 April 2000 and 31 March 2010 and, from that date until 15 March 2019 as 'Store and Premises'.
 10. Thus, the site appears to have been rated as a shop for the required 10-year period. This, however, does not necessarily equate with its use as a shop throughout this period. A screen shot from a model railway internet forum provides evidence that some retailing was carried on after 2010. However, this shows that in 2012 the site was only open by request and "the stock was rather run down".
 11. That the business rating records describe its use as a Store and Premises from 2010 suggests that something in the nature of its use changed at or around that time. This, to my mind, casts considerable doubt on the building being in A1 use from or shortly after 2010. I also refer here to an email from the 'Tavistock Times'. This sets out the history of the building and its ownership. In respect of the retail use, it can be no more specific than saying that it occurred for many years and does not provide dates or evidence of continuous use. It goes on to say that "when that [the shop] closed Malcolm [the previous owner] and his mates used to meet there regularly and 'play trains'". This provides further evidence to point to a cessation of the retail use and the use of the building for other purposes.
 12. The appellant points to the shop and its previous owner being well-known. This is backed up by evidence from a model railway internet forum.

¹ Council reference: U/3/50/125/1983/30

13. Letters submitted by third parties, and a blank letter with the letterhead "Tavyside Model Supplies" support the case that the building was used as a shop. However, the letters do not clearly set out when the use occurred. One author says that he used the shop regularly for "a period of at least 3 years"; another, who lived close-by, says that it was used as a shop in the 21 years she lived there, but does not say whether this was throughout that period or for a part of it; and although the other author states that he visited the business for "many, many years" he does not say when this was. The blank letter contained no evidence of the period that the shop was in use.
14. Taken individually or cumulatively, none of the above provides precise and unambiguous evidence of the use being carried out continuously for 10 years. This is also the case with the photographs and Google Street View images that he submitted.
15. In the Officer's report into the application, the Council questions whether the outbuilding was actually in a storage use, or at least a mixed use of retail and storage. It bases this on the relative size of retail and storage uses in rating records, though it has no 'first hand' evidence of how the building was used. It acknowledges that "it cannot be concluded from these figures what the actual planning use of the building was", and I find likewise on this point.
16. The Council is of the view that, were it to be held that the retail use had occurred for 10 years, and had not been lost thereafter, it was lost as a result of storage on the site. The Appellant disagrees with this. I do not have sufficient evidence to reach a definitive position on this matter. However, as the evidence does not prove that the use has occurred for 10 years, this is not consequential.
17. A third party provided estate agent's sales particulars for the appeal site and the adjacent bungalow. This describes the appeal site as a 'workshop'. However, this is merely the description given by the estate agent and cannot be taken as a definitive description of its use. Furthermore, photographs in the particulars do not conclusively show the use to which the building was put.
18. The Appellant states that he is only in the position he finds himself, as he made an application to the Council, and that he wishes to keep the building as a shop. These points are not relevant to my assessment of the lawful use of the building.
19. Having had regard to all of the evidence put forward, my finding on the balance of probability is that the site has been used as a shop. However, it is for the Appellant to show that this use occurred continuously for 10 years, on that same balance, and he has failed to do so. I appreciate the problems that he faced in getting the required evidence together. In this regard, I note his comments made at the application stage that he was not able to do this, and that "this was always going to be...an impossibility as the [previous] owner died in 2018". However, without evidence to prove the case to the required standard I cannot allow the appeal.

Conclusion

20. 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 outbuilding known as Tavyside models was, to our knowledge, erected over 40 years ago and has

been used as a model railway retail shop, A1 classification 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.

Roy Curnow

Inspector