



Appeal Decision

Site visit made on 16 June 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 July 2021

Appeal Ref: APP/X1355/X/21/2368870

**Chapel View Green Burial Site, Millershill Lane, Rowley, Consett, Durham
DH8 9HF**

- 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 Keith Watson against the decision of Durham County Council.
 - The application Ref DM/20/02401/CEU, dated 23 August 2020, was refused by notice dated 19 October 2020.
 - The application was made under section 191(1)(a) & (b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is:
 - 1) Permanent residential occupancy of site (applicant having lived in caravans on land for a period in excess of ten years); 2) Internal alterations to create one bedroom first floor flat (substantially constructed and used for more than four years for permanent residential occupancy in association with the green burial business); 3) Ancillary use of parts of the ground floor associated with the residential use on the upper floor, principally kitchen, but also foyer and lobby (also used for more than four years in association with item 2) above; 4) Physical building works to the upper floor and other interior changes to the ground floor (which took place over four years ago) comprising unauthorised building works; and 5) Physical building works to the exterior of the main building not completely in accordance with imposed planning conditions (which took place over four years ago) comprising unauthorised building works.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. I note that on the appeal form, section 26H has been ticked as the section under which the application was made. However, on review of the information, I am satisfied that section 26H is not relevant to the appeal, and I have considered it on the basis of the sections referred to above.
3. The issue of an LDC 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. The onus of proof lies on the appellant, and the relevant test of the evidence is 'the balance of probability'.
4. The appellant has submitted evidence including a petition and various letters and statements attesting to his character and the value of the service he provides. Unfortunately, such evidence goes more to the planning merits of the case, which are not relevant in deciding an LDC application or appeal.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Background and planning history

6. It is the appellant's case that he has been living in the immediate area since 1980, when he moved into Pondfield Villa, close to the appeal site. Although I have had regard to the appellant's evidence in relation to Pondfield Villa, it is not directly relevant for the purposes of this appeal, which relates only to the site at Chapel View.
7. In 2004, planning permission (ref: 1/2003/0779/17372) was granted for a 'green' human burial site and associated pavilion with access road and parking at Chapel View. There is no dispute that this is the last lawful use of the appeal site. Prior to this, the site was in agricultural use. In 2013, planning permission (ref: 1/2012/0599/85502) was granted for an extension to the existing chapel of rest, a detached garage and a hardstanding area, subject to a section 106 agreement. I note that the Council state that the development permitted in 2013 has not been carried out in accordance with the approved plans.

The residential occupancy within the main building

8. At the heart of the consideration here is the form of the residential occupancy being applied for. At point 2) within Section 5 of the application form, the appellant states that he wants an LDC for internal alterations to create a one bedroom first floor flat which is said to be in 'permanent residential occupancy in association with the green burial business'. At point 3), he goes on to apply for 'ancillary use of parts of the ground floor associated with the residential use on the upper floor, principally kitchen, but also foyer and lobby'.
9. In Section 4 of the application form, the appellant describes the existing use class being applied for as 'C3 – dwellinghouses'. There is no definition of the term 'dwellinghouse' in the Act but it was accepted in *Gravesham BC v SSE & O'Brien [1983] JPL 306* that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. A self-contained flat is normally a dwellinghouse for the purposes of the Act.
10. It is therefore necessary to consider whether a single independent dwellinghouse has been created within the building that comprises the chapel complex. This is a matter of fact and degree, based on all the relevant details of each particular set of circumstances.
11. On my site visit, I saw that the ground and first floor layouts are largely as shown on the proposed floor plans (ref: 20016-003 A). On the first floor is a bedroom and en-suite shower room. Adjacent to the bedroom, at the top of the stairs, is a lounge area that is also denoted as a consultation room for the business. On the ground floor, opposite the main entrance, is a kitchen area. The rest of the main building is given over to the operations of the business.

12. A number of issues arise here. Firstly, a kitchen is not an ancillary element of a dwellinghouse, but part and parcel of its primary function of providing day-to-day living facilities. Secondly, it is clear from the evidence that the ground floor kitchen also serves the purposes of the business, by providing buffet food and snacks to mourners after funerals. That being the case, the kitchen cannot be said to be for private use. The lounge on the first floor is also shared with the business, albeit occasionally, but this still prohibits it from being fully private.
13. It is of course common to find accommodation such as caretakers' or managers' flats associated with another use in the same building. However, these tend to be self-contained. In this instance, the only truly private living space is the first floor bedroom and shower room. The lounge and kitchen clearly have a dual usage with the business. Although there can be little doubt that the appellant is content with this arrangement, crucially, the living accommodation is not self-contained and could not be rented or sold to an independent tenant in its current form.
14. The sharing of facilities and the lack of privacy between the two uses lead me to conclude that a dwellinghouse within use class C3 has not been created in this particular case. Instead, a mixed use appears to have been created, resulting in an intensification of the use of the site over and above its lawful use. I am satisfied that this amounts to a material change of use of the appeal site.
15. Turning then to the relevant timescales, the time limits for taking enforcement action are set out in s171B of the Act. In respect of the change of use of any building or part of a building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
16. However, as I have found that a single dwellinghouse has not been created at the appeal site, the change of use falls under section 171B(3), which provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
17. In order for the appeal as it relates to the residential use within the main building to succeed, the appellant needs to submit sufficient precise and unambiguous evidence to show that the residential use commenced on or before 23 August 2010, and persisted on a continual basis for a period of ten years.
18. The appellant's own evidence is that he moved into the main building approximately five years ago. He further states that before this, he would stay in the building when the caravan was too cold, which indicates only intermittent occupation prior to his stated five year occupation.
19. This evidence is backed up by the statement of Mr Derek Coleman, who says that the appellant moved his accommodation to the upper floor of the chapel in 2015. Similarly, Mr David Byers states that Mr Watson moved into the chapel building in late 2015/early 2016. Joyce Mawer says that she has known the appellant since 2014, and first visited the site at the end of December 2014, when he was living in the static caravan. She says that he moved into the chapel building around 12-18 months later.

20. On the basis of this evidence alone, it has been demonstrated that the appellant has not lived continuously in the main chapel building for ten years or more, and so no LDC can be issued for this material change of use.

The occupancy of a caravan on the site

21. The appellant states that when he left Pondfield Villa, he moved one of two large static caravans from that location to the appeal site for use as his own residence in March 1997. He contends that he has lived on the site continuously since that date. I note that a second residential caravan was moved to the appeal site a little later and used for storage purposes. The appellant goes on to say that he lived in a number of other caravans parked on the appeal site until he moved into the main building approximately five years ago.
22. In terms of documentary evidence, the appellant confirms that he has been unable to find any mail or other confirmation bills sent to the caravans where he lived, as he has had difficulty with record keeping, which was previously handled by his wife. He also says that, on occasions, he spent time at a tenanted property at 54 Moorland Crescent before his daughter and partner took occupation of that property in 2009.
23. Google Earth images have been provided ranging from 2001 to 2018. Whilst I have taken these into account, they only demonstrate the presence of the caravans and various structures during this time. It is not possible to draw any conclusion regarding the use of the structures from these pictures.
24. A number of criminal incidents have occurred at the appeal site. At his Appendix 8, the appellant provides a schedule of incidents dated 2010-2013. The event of 15 May 2010 proves that a caravan was present on site on that date, but does not establish its use. The other two incidents similarly provide little affirmative evidence to show that the site was in continuous residential use at this period.
25. I have had regard to the wording of planning application ref: 1/2011/0625, which was refused in April 2012. Amongst other things, the description of the development referred to 'retention of temporary dwelling'. According to the appellant's evidence, he had already been living permanently in caravans at the site for 14 years, which is more than enough time for lawfulness to have accrued. It is therefore unclear why he would have used the words 'temporary dwelling'. I further note the reference to the 'apparently residential caravan' in the planning officer's report for this application.
26. Figure 7 in the appellant's statement of case shows photographs of both the caravans, said to have been taken in 2012. The caravan in the centre of the first image has a sizeable annex with a door and has curtains in the windows. The other caravan is fitted out with net curtains. To that extent, they both have a domestic appearance. I therefore agree that these factors indicate that the appellant was likely living in a caravan on site in 2011-12, which falls within the relevant time frame.
27. I turn then to the witnessed statements and letters of support. Mr Derek Coleman states that the appellant left Pondfield Villa and moved into a caravan on the appeal site in March 1997. Once the chapel was built, subsequent to the 2003 permission, he says that the appellant moved into the chapel and had

a bed at first floor level, where he slept on an ongoing basis. As a result, the caravan was no longer present.

28. Although Mr Coleman is not specific about dates, this suggests an occupancy of the caravan or caravans of less than 10 years. Subsequent to the 2012 permission, the appellant was then living in a larger caravan on the site next to the chapel, on the basis that it gave him more room and more comfort. When, in Mr Coleman's words, he was forced to remove the caravan, he once again moved back into the extended chapel, using the downstairs rooms as living accommodation. In 2015, the appellant moved his accommodation to the upper floor. This evidence suggests a period of occupancy of the caravan or caravans of around three years.
29. Mr David Byers states that the appellant lived in a static caravan on site, which was later replaced with a larger one, but he is not specific in terms of dates in relation to the occupation of the caravans. As noted above, Joyce Mawer states that he was living in a caravan at the end of 2014 but is unable to attest to the circumstances before 2014.
30. With regard to the other letters, I note their general support of the appellant and the service he provides at Chapel View, but they provide little in the way of specific dates and timeframes that would support his case. I have taken into account the other evidence submitted, but it is insufficient to show definitively that the legal tests have been met.
31. In light of these factors, the appellant has not demonstrated, on the balance of probabilities, that he has continuously occupied a caravan on the appeal site for the required period of 10 years. As a result, no LDC can be issued for this material change of use of the land.

Operational developments

32. In association with the change of use, the appellant seeks to establish the lawfulness of operational developments undertaken at the site. These include the internal alterations to create the first floor living accommodation, the building works to the upper floor and other interior changes to the ground floor, and works to the exterior of the main building which are not in accordance with the existing permissions.
33. In order to be immune from enforcement action, these developments must have been substantially complete for four years or more prior to the LDC application date, in other words, by 23 August 2016. As with the material changes of use above, the onus of proof is on the appellant, and the relevant test of the evidence is 'the balance of probability'.
34. A number of issues arise, firstly, that the appellant is vague as to the exact works that he seeks to demonstrate are lawful. He says that these unauthorised building works are of the structure, as built, with the exception of the link corridor. He also makes reference to minor roof coverings, which he says were only noticed years after they had been implemented. Secondly, and crucially, the appellant provides little by way of timescales or evidence of completion of any works alluded to within the relevant period.
35. I note the appellant's contention that the problems experienced by Council officers have been more associated with the untidy nature of the site during the construction process, which have now been addressed.

36. Nonetheless, in the absence of sufficient clarity as to the schedule of works for which lawfulness is sought, and compelling evidence as to when these works were complete, I conclude that the Council's refusal to issue an LDC for operational development at the appeal site was well founded.

Other Matters

37. The appellant suggests that, in the event that the appeal were to be dismissed, a personal consent could be issued allowing him to stay on site. However, an LDC is not a planning permission, and there is no deemed planning application with an LDC appeal. The grant of an LDC is declaratory of lawful use or development rights on the date of the application, and a refusal to grant one is simply a refusal to grant the declaration sought.

38. I note also the appellant's contention that his residency creates no demonstrable harm. As previously, this argument goes to the planning merits of the case, which do not fall to be considered in an LDC appeal.

Conclusion

39. As set out in the NPPG¹, the refusal of an LDC does not preclude another application being submitted at a later date, if more information can be produced.

40. Nevertheless, on this occasion, I conclude that the Council's refusal to grant an LDC in respect of the uses and operational developments set out above was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

Elaine Gray

INSPECTOR

¹ Paragraph: 005 Reference ID: 17c-005-20140306