

Appeal Decision

Site visit made on 9 August 2021

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

Decision date: 16 August 2021

Appeal Ref: APP/R2330/X/20/3274576

Caravan located to the east of The Old Pump House, Town Bent, Oswaldtwistle BB5 3QH

- 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 T McSorley against the decision of Hyndburn Borough Council.
 - The application Ref 11/20/0055, dated 5 February 2020, was refused by notice dated 9 November 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is use of a single static mobile home as a dwelling and the use of the associated land for domestic purposes.
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Decision

1. The appeal is dismissed.

Reasons

2. The Old Pump House is a dwelling that was constructed following the grant of planning permission for 'erection of replacement dwelling' in 2007, after an LDC had been granted in 2006 for 'continued use as a dwellinghouse (Class C3)' of the Town Bent Pump Station. The Pump Station building had been occupied by the Appellants father, Mr T McSorley (Senior), for a period exceeding ten years. The static mobile home that is the subject of the appeal was brought onto the land to provide security whilst the replacement dwelling was constructed.
3. The onus of proof falls on the Appellant and he must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the mobile home has been occupied independently and continuously for more than ten years prior to the date of the application and that, therefore, the Council's refusal to grant an LDC was not well founded. The Appellant maintains that his father has occupied the mobile home as a dwelling continuously and independently since 2008.
4. The Council relies on the Delegated Report on the application in which it is stated that "The Council's Audit Team have evidence that the applicant's father...has been living in various addresses across Oswaldtwistle during the period". But the Council has not submitted the evidence they refer to. The mobile home has electricity and a water supply but it is not separately metred. There are therefore no utility bills to corroborate the claim that it has been continuously

occupied as a dwelling since 2008. Nor has Council Tax been paid for occupation of the mobile home at any time, and no letters addressed to the Appellant's father at the mobile home have been submitted in evidence.

5. There is, in fact, no documentary evidence of occupation of the mobile home. The only evidence submitted by the Appellant is a statutory declaration by a family friend, Mr Hodge, a letter from the Appellant, and six supporting letters by others. The statutory declaration is properly constructed and Mr Hodge stated in it that "I can confirm that in the whole time since 2008, Mr Thomas McSorley (Senior) lived in the static caravan...". But a statutory declaration must be signed in the presence of a solicitor, commissioner for oaths or a notary public, and that submitted was signed in the presence of a Licensed Conveyancer. It cannot therefore be afforded any greater weight than the letters.

6. It is surprising, in fact, that neither the Appellant nor his father has made a statutory declaration, whether properly declared or not. The Appellant, in his letter, claims that "...my father has lived independently in the static caravan since 2007" but this does not indicate that occupancy has been continuous or intermittent. Nor does any of the six other letters indicate that occupancy has been continuous or intermittent. Taking into account the proximity of the mobile home to The Old Pump House it is unlikely, in the absence of any evidence to indicate otherwise, that the Appellant's father has lived wholly independently in the mobile home whilst his son has lived in the nearby dwelling.

7. There is insufficient precise and unambiguous evidence to demonstrate, on the balance of probability, that the mobile home has been continuously and independently occupied for in excess of ten years prior to the date of the application. For the reasons given, and on the evidence now available, the Council's refusal to grant an LDC for 'use of a single static mobile home as a dwelling and the use of the associated land for domestic purposes' at Caravan located to the east of The Old Pump House, Town Bent, Oswaldtwistle was well-founded and the appeal thus fails. The powers transferred under section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector