



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 19 August 2021

Appeal Ref: APP/D0840/X/20/3265131

Two Acres, Trevillick, Tintagel, Cornwall PL34 0DN

- 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 Ms B A Mills against the decision of Cornwall Council.
 - The application Ref: PA20/05272, dated 27 June 2020, was refused by notice dated 8 September 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 siting and residential use of the residential mobile home and domestic outbuilding.
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Decision

1. The appeal is dismissed.

Main Issue

2. Under s191(2)(a) of the 1990 Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired. The relevant time limit in this appeal for not being able to take enforcement action against the breach of planning control under s171B(3) of the 1990 Act is the end of the period of ten years beginning with the date of the breach. Given that the date of the LDC application is 27 June 2020, the residential use claimed would need to have begun by at least 27 June 2010.
3. There is evidence that there may have been a mobile home on the site since 1963. The Council accepts that there has been a mobile home there for over 10 years and there is no dispute that it has not been used for residential purposes. Therefore, the main issue is whether the appellant can show, on the balance of probability, that the residential use of the mobile home and the outbuilding had subsisted on a substantially uninterrupted basis for at least ten years prior to the date of the LDC application. The burden to make out the case rests firmly with the appellant.

Reasons

4. The appellant has stated in a declaration made under the Statutory Declarations Act 1835 that she purchased the appeal site in May 2020. She has known Mr Heard, the former owner of the land and the mobile home and

the outbuilding, for over 20 years. The appellant goes on to say that "The site has been used by Mr Heard to keep his horses, chicken, and other stock and Mr Heard has frequently stayed in the mobile home – often for several days/weeks at a time over at least the last twenty years". Further letters of support refer to Mr Heard staying in the caravan for "long periods of time" "over many years", frequently staying there "often for a week or more at a time" and "for weeks at a time". Another letter refers to "there seemed to be a man living in the buildings on the land, smoke coming from the chimney, washing on the line, and lights on darker days".

5. I accept that the Council has not produced any evidence of its own to contradict the appellant's case. I also acknowledge that Mr Heard's use of the mobile home may have spanned more than ten years. However, the residential use needed to have subsisted without substantial interruption over the relevant ten years period. To my mind, if Mr Heard was staying in the mobile home for weeks at a time, and even if those stays constituted long periods, this is likely to mean that there were other weeks at a time and other longer periods when he was not living there.
6. In this respect I note that Mr Heard shared a dwelling with his partner in Tintagel about 1.5 miles away. Since selling the appeal site he lives in Tintagel full time. There is nothing showing how Mr Heard might have split his time living between the two addresses. In my opinion Mr Heard could also have easily supervised and monitored his horses and chickens from the Tintagel property given the short distance that was away from the land. Thus, caring of his animals does not show that he lived on the appeal site for most of the time.
7. Against this background, the evidence does not demonstrate that there were no significant breaks in the occupation of the mobile home when the Council could not have taken enforcement action because the residential use was not occurring. The effect of such breaks on each occasion would have been to stop the enforcement immunity clock ticking. I find that as a matter of fact and degree, the appellant's evidence is not sufficiently precise and unambiguous to show, on the balance of probability, that the residential use applied for had continued substantially uninterrupted for the required ten years.

Conclusion

8. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of residential use of the residential mobile home and domestic outbuilding 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.

Gareth Symons

INSPECTOR