
Appeal Decision

Site visit made on 27 July 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2021

Appeal Ref: APP/J0405/X/21/3271906

22 Main Street, Mursley, Aylesbury MK17 0RT

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Hans Korge against Buckinghamshire Council (Aylesbury Area).
 - The application Ref. 20/02725/ACL is dated 14 August 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 touring caravan site.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal is made against a failure of the Council to give notice within the prescribed period of a decision on an application for a certificate of lawful use for an existing use of land as a touring caravan site. The Council has advised that had they made a decision, the application would have been refused.

Main Issue

3. Section 191(4) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.
4. The main issue is whether the Council's deemed refusal to grant a Certificate of lawfulness of existing use or development (LDC) would have been well founded. That turns on whether the appellant can demonstrate, on the balance of probability, that the use as a touring caravan site took place on or before 14 August 2010 and continued without significant interruption for at least ten years thereafter, so as to be immune from enforcement action.

Reasons

5. The appeal site is a paddock at the rear of The Green Man Public House (PH). It is the appellant's case that this Land has been in continual use as a touring caravan site since December 2007 operating throughout the year. His evidence relies on his statutory declaration that since he bought the public house as part of a consortium, and which included the caravan site, his tenants have operated the paddock as a touring caravan site. He affirms that he has observed caravans and motorhomes on the Land when visiting the premises, and those visits have been at least once every fortnight. Correspondence from previous tenants of the PH has also been provided confirming that they had caravans on the Land during their tenancies and two letters from neighbouring residents also confirm that use.
6. The Council acknowledge that during the requisite period they have had occasion to visit the appeal site in response to concerns over its use as a caravan site, use for tented camping/bike rally and in relation to concerns over residential occupation of caravans. However, evidence from records of those visits in 2009, 2016 and 2018 concluded that there was no breach of planning control for which enforcement action could be taken. However, more recently, a visit in response to concerns over the residential occupation and unauthorised siting of 4/5 static caravans in early 2020 did result in a request from the Council for that use to cease to prevent enforcement proceedings. It was in response to that request that the application for a lawful development certificate the subject of this appeal was made.
7. The nature and type of the Land's use as a touring caravan site is likely to be significantly different to the Land's use as a paddock. While the claim is that the caravan site use continued since December 2007, there is no specific detail or information showing the nature, extent or scale of activity. Evidence about use as a caravan site is unclear. In addition, apart from general assertions and claims, there is no precise detail showing how the Land was actually used as a touring caravan site on or before 14 August 2010. For example, there is no firm evidence showing when the touring caravan site use actually commenced. I find that the evidence presented does not clearly show that the definable character of the Land's use changed from paddock to touring caravan site on or before the relevant date.
8. In addition to all of that, the precise nature, extent and continuity of that use is unclear. Whilst there is evidence from the landlord of the PH that between April 2012 and February 2015 the site was certified by the Caravan Club for its use by 5 caravans for a period of no more than 28 consecutive days, and screen shots of campsite listings during that period support that evidence, the extent and continuity of use as a touring site during other periods is unclear. Evidence suggests that the site has not been certified by an exempted organisation since 2016 and no evidence of a site licence has been provided. Moreover, the Council's investigation in 2018 found that the Land was not in use as a permanent camp site and there was no basis to take enforcement action. Whilst I accept that previous landlords have stated that they have utilised the site as a touring caravan site, their evidence is not in the form of formal statutory declarations and I attach limited weight to this evidence. Furthermore, there is no corroborating evidence of any bookings taken, receipts or accounts relating to that use. Nor is there any evidence from users

of the site, all of which would help to demonstrate continuous use for the required ten-year period.

9. Overall, therefore, I consider that the information submitted with the LDC application is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the appeal site has been in continuous use as a touring caravan site (that is without significant gaps) for a period of ten years commencing on or before 14 August 2010.

Conclusion

10. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of a touring caravan site at 22 Main Street, Mursley, Aylesbury would have been 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.

Elizabeth Pleasant

INSPECTOR