



Appeal Decision

Hearing held on 15 November 2022

Site visit made on 15 November 2022

by J A Murray LLB(Hons) Dip.Plan.Env DMS Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal Ref: APP/E2205/X/20/3249023

Herwish, Martens Lane, High Halden, Ashford, Kent, TN26 3JP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Robert Carpenter against the decision of Ashford Borough Council.
 - The application ref 19/00228/AS, dated 17 February 2019, was refused by notice dated 7 November 2019.
 - 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 use of a wooden shed as a dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 16 November 2022, I heard Mr and Mrs Carpenter's appeals against the service of an enforcement notice concerning breaches of conditions on planning permissions and the refusal of an application for planning permission for the stationing of caravans. I have dismissed the enforcement appeals, but allowed the appeal against the refusal of planning permission. Nevertheless, those appeals are separate to this LDC appeal, which will be determined solely on the facts and relevant law, and to which planning merits are not relevant.
3. Notwithstanding the need to examine the facts, I established in advance, through a procedural note, that neither party wished to give or cross-examine evidence under oath. Accordingly, I was satisfied that an inquiry was unnecessary.

Main Issue

4. The main issue is whether the refusal of the LDC was well-founded. This will turn on whether the appellant has proved on the balance of probability that the use of the wooden shed changed to use as a dwelling on or before 17 February 2015 and that the use then continued without significant interruption for 4 years after the change.

Reasons

5. The existing shed was erected on the site in 2011, although it was initially used as an office for a low-level pig breeding and hog roast business. At that stage,

the shed had electricity, but no water supply and the appellant was living in a mobile home near the shed. The site benefitted from a temporary planning permission for its use as a residential caravan site for two gypsy families with three caravans. This was granted on 14 January 2009 on appeal Ref APP/E2205/A/08/2068379.

6. Sadly, the appellant suffered a traumatic accident in 2013, which resulted in the amputation of one leg below the knee. Immediately following the surgery, he was confined to a wheelchair or bed and would have been unable to access his mobile home. Accordingly, the hospital would not release the appellant until other accommodation was available, and so his son and daughter put a bed, television, and portable toilet in the shed.
7. The building is a single skin, wooden domestic garden shed with a felt covered. It measures about 6m by 3m and comprises a single room, with no internal divisions. It has an electricity supply, and by Christmas 2013, it was equipped with a fridge, cooker, sink unit and shower, and a water supply was provided. Aside from the cooker, the only source of heating is an oil filled electric radiator, and there is no foul drainage provision.
8. Around the same time, the County Council also installed a ramp to provide wheelchair access to the appellant's mobile home. However, he says this was a waste of time because, the mobile home door opened outwards, and the ramp was 6 inches lower. Even if he could have got in with his wheelchair, he says he would not have been able to go left or right, as the doors were too narrow. The County Council said it was the best they could do at the time. The appellant could hop from the door to the bathroom to use the flushing toilet in the mobile home. That mobile home was removed sometime after photographs were taken in July 2018 and, although the ramp is still on site, it now serves another mobile home, occupied by the appellant's mother-in-law.
9. There is written and oral evidence from several people who say they have visited the site and seen the appellant living in the shed since his accident. This includes letters from East Kent Hospitals Clinical Support Services Division and the appellant's GP, both dated 21 May 2018. The GP says the appellant was living in the shed when he visited him after the accident, as he was unable to access his mobile home. The hospital letter says that, on the initial assessment in 2013, the appellant was unable to access the mobile home or move around within it, due to the doorways being too narrow for the use of a wheelchair. He was therefore living in the converted shed at that time and has continued to use it as living accommodation, "as there are times when he is unable to wear the prosthetic limb and has to resort to a wheelchair."
10. The appellant explained that his prosthetic leg was fitted some 5 months after his accident, and 6 months after the accident he returned to work as a hydraulic cable technician in the rail industry. He can drive, and a photograph shows he was able to climb into and operate, a small excavator. He did remarkably well to resume an active life soon after his accident.
11. Initially the appellant said he could go back into his mobile home, "on and off", after about 6 months. However, the appellant has had further surgery since then, and each time he has been restricted to the shed. He now works intermittently, but explained that, even since his accident, he has also worked for another company in Sussex. The appellant explained there are still times when he can get into a mobile home, and he does so when he needs a flushing

toilet. Furthermore, when working in Sussex, he lives in a caravan provided for him. Nevertheless, he said, "now I like my shed." There appears to be an element of choice, as opposed to absolute necessity.

12. The Council has no direct evidence of its own to show the appellant was not living in the shed continuously for 4 years prior to the LDC application. However, it produces some photographs. First, an external one taken in February 2018 appears to show the shed being used for storage purposes. Secondly, the Council says internal photographs from July 2018 do not show the extent of water damage and general wear and tear around the shower which you would expect from 4 years' continuous use. They also show what appears to be a new curtain around the sink unit, complete with fold marks from how it was packaged.
13. I have no reason to disbelieve the appellant's explanation that the February 2018 photograph was taken when he and his wife were on holiday abroad. He says their daughter and her partner, who live on the appeal site, took the opportunity to store their things in the appellant's shed whilst they repaired and relocated theirs. This is corroborated, albeit briefly and without reference to dates, in a letter from the appellant's daughter.
14. The fact that a new curtain may have been hung around the kitchen sink unit is of no real significance. The lack of wear and tear around the shower is more difficult to explain, especially given the shallow tray and the use of a shower curtain, rather than a fixed screen. However, that lack of wear and tear is consistent with the overall pattern of use which emerged from the oral evidence. The appellant says he and his wife live in the shed and I have no reason to doubt that they sleep in and spend most of their time there. However, whilst the appellant's former mobile home has been removed, the remaining 2 mobile homes on the site are occupied by the appellant's daughter and her family and his mother-in-law respectively. His mother-in-law occupies the twin-unit mobile home, now served by the disabled access ramp.
15. The appellant said he, his wife, his daughter, her partner and children, and his mother-in-law are part of the same household; they are a single, extended family unit. It appears they share the use of the overall site. Consistent with that, the appellant uses the flushing toilet facilities in one or more of the mobile homes. What was described in the Council's written evidence as the "portable toilet" in the shed is just a very basic commode chair and, aside from those in the mobile homes, there are no other toilet facilities available on the site. Given the lack of signs of regular use of the shower in the shed over 4 years or more, it is also probable that other bathroom facilities have been used in the mobile homes.
16. The appellant relies on the 4 year immunity period for a change of use of a building to use as a single dwellinghouse. As a matter of fact and degree, and on the balance of probability, even if the shed can be properly described as a dwellinghouse, I find that the appellant has not proved that its use has changed to a separate single dwellinghouse; rather it has been used in association with and not separate from the mobile homes to provide additional living accommodation on the site for this extended family unit.

Conclusion

17. 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 use of a wooden shed as a dwelling 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.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robert Carpenter
Joseph G Jones of BFSGC
Joseph P Jones of The Gypsy Cooperative, Kent
Minnie Brazil, Gypsy Liaison Officer, Nottinghamshire (and Mr Carpenter's sister-in-law)

FOR THE LOCAL PLANNING AUTHORITY:

Mark Campbell MA MRTPI of Evans Jones Planning Consultants, instructed by the Council

INTERESTED PARTIES:

Gregory Peters, local resident, and member of the Redbrook Street Neighbourhood Group
Councillor Alan Pickering, Ashford Borough Councillor
Bob Harrison, local resident