



Appeal Decision

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th November 2023

Appeal Ref: APP/V2255/X/22/3312420

Warren Farm, Warden Road, Eastchurch, Sheerness ME12 4HD

- 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 Micheal Webb against the decision of Swale Borough Council.
 - The application ref, dated 31 August 2022, was refused by notice dated 30 November 2022.
 - 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 continued use of a mobile home for residential use.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of the existing use from the application form in the banner heading above. It is clear from this and the evidence that the appellant is seeking to establish whether the existing use of the land for the siting of a mobile home for residential purposes is lawful.
3. As the decision rests on a legal matter a site visit was not necessary in order to determine the appeal.

Reasons

4. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests and the planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development was lawful at the date of the application. The main issue is whether Council's refusal to grant the LDC was well-founded.
5. Section 191(2)(a) of the 1990 Act provides that uses are lawful at any time if no enforcement action may be taken in respect of them because the time for enforcement action, 10 years in this case, has expired. There is no dispute between the parties that the mobile home has been in residential use for a sustained period of more than 10 years prior to the date of the application and I have no reason to disagree. However, that is not the end of the matter.
6. Section 191(2)(b) of the 1990 Act provides that uses and operations are lawful at any time if they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

7. An enforcement notice was issued on 14 January 2014, with an effective date of 13 February 2014 unless an appeal is made against it beforehand. The enforcement notice plan indicates that the notice covers the area of land for which the LDC is sought. An appeal was made against the enforcement notice and the notice was upheld with corrections on 28 October 2014. As corrected, the breach of planning control alleged by the notice is:
- ‘the material change of use of the land to land used as a caravan site for the stationing of a caravan/mobile home used for residential purposes and land used for the keeping of animals not associated with any agricultural activity, and the erection/stationing of buildings/field shelters, structures, stables, fencing, material and equipment used to facilitate the housing of such animals’.
8. As corrected, the requirements of the enforcement notice are to:
- (i) cease the use of any part of the Land as a caravan site for the stationing of any mobile homes or caravans for residential use, or for the keeping of animals not associated with any agricultural activity;
 - (ii) remove any caravans/mobile homes used for residential purposes from the Land;
 - (iii) remove any animals not associated with any agricultural activity on the Land;
 - (iv) Remove any structures, buildings, field shelters, stables, fencing, materials and equipment brought on to or erected on the site including any works undertaken in connection with the use of the site for stationing of caravans or mobile homes for residential use or for the keeping of animals not associated with any agricultural activity on the Land.
9. The notice is in force because it was upheld following the appeal. Requirements (i) and (ii) require the use of any part of the land as a caravan site for the stationing of any mobile homes or caravans for residential use to cease, and for any caravans/mobile homes used for residential purposes to be removed.
10. The use for which the LDC is sought is therefore in contravention of the requirements of an enforcement notice that is in force. Under section 191(2) of the 1990 Act the use is not lawful.
11. It is clear from the wording of the alleged breach of planning control and the requirements that the notice is attacking a residential use. It is not the case, as suggested by the appellant, that the notice is concerned only with a residential use associated with looking after animals.
12. The appellant argues that the enforcement notice was not properly served or registered as it is not included on the land charges register. The validity of the enforcement notice can only be questioned through an appeal under section 174. The appellant was able to appeal against the notice so must have been aware of the notice when it was served. There was no appeal on ground (e), that copies of the enforcement notice were not served as required by section 172 of the 1990 Act. There is no requirement to serve a notice on the planning agent as suggested in this case, unless they are the owner, occupier or have an

interest in the land that is materially affected by the notice, as set out in section 172(2).

13. The Council can exercise discretion in enforcing the requirements of a notice. That the Council allowed the use to continue due to the personal circumstances of the occupier of the mobile home does not indicate that the enforcement notice is no longer in force. The indications given by the Council's Planning Officer that she was recommending approval do not have any bearing on my decision.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of continued use of a mobile home for residential use 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.

N Thomas

INSPECTOR