The Planning Inspectorate

Appeal Decision

Site visit made on 2 January 2024

by Gareth Symons BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 12 January 2024

Appeal Ref: APP/K1128/X/23/3319798
Coolings Farm, Town Road, East Prawle, Kingsbridge TQ7 2DD

- 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 Jonathan Wotton against the decision of South Hams District Council.
- The application ref 4050/22/CLE, dated 17 November 2022, was refused by notice dated 25 January 2023.
- 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 use of land for seasonal caravanning.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form for the LDC described the existing use as set out in the banner heading above. Schedule 1 of the Council's decision notice also refers to "Use of land for seasonal caravanning", which shows to me that is how the Council considered the application. The appellant does not define the term seasonal caravanning, which is a matter I return to below in my reasoning, but after reading the submitted evidence it seems to me that the appellant means using caravans on the site for holidays on a seasonal basis. I note that in their planning and appeal statements reference is made to the siting of caravans. Given that caravans are usually mobile structures (they must be to meet the statutory definition of a caravan) their siting on land is normally taken as constituting a use of land. On that basis, the term 'siting' does not define the use of the caravans. I shall though, given what I have already said about what I believe to be their use, also take their siting as being for use by holidaymakers.

3. However, in their appeal statement, the appellant also refers to the site being used for the storage of caravans and that local persons knew the site was being used for this as well. Storage of caravans on land, as an activity, is a use materially distinct from using the caravans for holiday purposes. The storage activity reference has been introduced at the appeal statement stage. Consequently, although the other appeal parties such as the Council and objectors could have commented on this within the appeal timetable, they may have addressed their own cases from the outset differently. As such, I cannot rule out prejudice to other parties if I was to proceed to assess a storage use of

the site which would be substantively different from a caravanning use. I shall therefore assess the appeal based on what was applied for.

4. Consideration of the appeal requires looking back in time from the date of the application, which was 17 November 2022. Moreover, a single site visit by myself on one day in 2024 would only have given a snapshot view of how the land looked at that moment, which would have been no assistance when looking back at the use of the land over an extended period. Consequently, there was no need for me to visit the appeal site. No party has been prejudiced by this course of action.

5. Under s191(2)(a) of the 1990 Act, uses and operations are lawful at any time if no enforcement action may then be taken against them, whether because they did not involve development or require planning permission or because the time for taking enforcement action has expired or for any other reason. The relevant time limit for the expiry of the time for taking enforcement action for the use of land under s171B(3) of the 1990 Act is the period of ten years **beginning with the date of the breach**. The text I have highlighted is important because the timeframe referred to by some parties of ten years back from the date of the application is not correct.

6. The appellant needs to show, therefore, that seasonal caravanning occurred at the site over a substantially uninterrupted basis for at least ten years by the date of the application. The burden to make out the case that a LDC should be granted rests firmly with the appellant and the test of the evidence is the balance of probability.

Main Issue

7. The main issue is whether the Council's decision was well founded.

Reasons

8. S191(6) of the 1990 Act states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed. Thus, the use in this case, described in an LDC if I was to issue one under s191, would be shown to have been protected from enforcement action on the date of the application, and it would remain so unless and until there was a material change in circumstances.

9. Accordingly, and since an LDC cannot be subject to conditions, an application must relate to a specific use. It is not open to an applicant to pose a general enquiry as to what is or might be lawful. Planning Practice Guidance (PPG) advises that a certificate for an existing use must include a description of the use, operations, or other matter for which it is granted. In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (ie "sui generis" use), which is what has been applied for in this appeal.

10. As referred to earlier, the appellant has not defined what is meant by seasonal caravanning. I might assume that this means persons bring their caravan to the site and use it for holidaying during the holiday season. Aerial photographs show variable caravan numbers over the various years which may bear this assumption out. Or they may, as some of the letters and sworn statements

state, bring the caravan to the site and use it for holidays during each year and they also leave the van there from one year to the next, but still use it primarily for holidaying, as opposed to just storing it on the land to be picked up and taken for holidays elsewhere and brought back until the next time it is needed.

11. Either way I look at it, although I have read carefully the submitted evidence, I cannot ascertain a pattern of use within a defined season. Some statements refer to use in school holidays but then also visiting during winter months. Bearing in mind PPG, and where the burden lies to make out the case, the submitted evidence is not sufficiently precise and unambiguous to show, on the balance of probability, the use of the land for seasonal caravanning over a substantially uninterrupted ten-year period. That does not mean that it has not, and the appellant is not precluded from making a further future application to the Local Planning Authority backed by more detailed evidence.

12. I could not issue a LDC with the necessary precision. I did contemplate asking the appeal parties about this matter, but that would have likely led to more detailed information that would require re-consultation. It is not my place to invite further evidence to potentially make the case out for the appellant.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of seasonal caravanning 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