



Appeal Decision

by Gareth Symons BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 12 January 2024

Appeal Ref: APP/J9497/X/23/3320193

Kings Cottage, Ponsworthy, Newton Abbot TQ13 7PL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr James Caslake against the decision of Dartmoor National Park Authority (DNPA).
 - The application ref 0022/23, dated 14 December 2022, was refused in part by the National Park Authority by notice dated 8 March 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 a residential dwellinghouse (C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The existing use applied for on the LDC application form was "Use as a residential dwellinghouse", as I have set out in the banner heading above. That description defines the development I am considering in this appeal, which is not the use described on the appeal form which was "Use as a residential dwellinghouse with garden and sheds". DNPA also considered the application as applied for and issued a LDC with that same description having found that the residential use of Kings Cottage was lawful.
3. The plan that accompanied the application shows two separate parcels of land. One is the house and the other is a close by, but separate, area of garden. The LDC issued relates only to the house. The appellant considers that the LDC should have covered the garden and sheds as well as the house.
4. The burden to make out the case in LDC appeals rests firmly with the appellant and the test of the evidence is the balance of probabilities.
5. Given that examination of the submitted evidence involved looking back in time from the date of the application, which was 14 December 2022, there was no benefit to either party, or to myself, to see the site as it is now. Neither appeal party has been prejudiced by this approach.

Main Issue

6. The main issue is whether the DNPA decision was well founded.

Reasons

7. With regard to the above, I am not considering any garden use or any land with sheds on it. Moreover, the use applied for could only involve a building used as a dwellinghouse. The only building used as such is Kings Cottage which is not on the separate garden area. Even if I was to extend my consideration of the appeal to include the garden, I do not have any of the evidence submitted to DNPA with the application. From reading the DNPA officer report, the evidence such as Council Tax records and a utility service bill appears to relate to the residential occupation of the house and not to the use of the garden anyway. In addition, I do not have any evidence to substantiate the appellant's claims about use of the garden and the sheds. Therefore, whichever way I look at it, the required level of evidence to back up the appellant's case is not before me.
8. Land registry documents may show that the garden land is owned by the appellant, but ownership does not necessarily show land use. DNPA may have considered other similar LDC applications differently. However, I do not have any details of those other cases to make any meaningful comparisons with this appeal and, in any event, each application or appeal should be considered based on its individual circumstances and evidence.

Conclusion

9. For the reasons given above I conclude that the DNPA refusal in part to grant a certificate of lawful use or development in respect of use as a residential dwellinghouse 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