



Appeal Decision

Site visit made on 20 February 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th April 2024

Appeal Ref: APP/Z3825/X/23/3323907

Small piece of Woodland known as Furlong Shaw, situated approximately 200m north of 1 Merrion Cottages RH13 8EH

- 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 Alan Griffiths against the decision of Horsham District Council.
 - The application ref DC/21/1068, dated 15 May 2021, was refused in part by notice dated 12 December 2022.
 - The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as 'a single shepherds hut rented out for holiday use. An associated kitchen and bathroom. Both shepherds hut and kitchen/bathroom building have been onsite since June 2015. The hut provides accommodation for two adults.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of development given in the application form in the banner heading above. The appellant described the existing use, building works or activity as 'a single shepherds hut rented out for holiday use. An associated kitchen and bathroom. Both shepherds hut and kitchen/bathroom have been onsite since June 2015. The hut provides accommodation for two adults.' In the grounds for application of a LDC, the appellant ticked 'the building works were substantially completed more than four years before the date of this application.'
3. The Council considered the lawfulness of the use of land for holiday-related purposes and the lawfulness of operational development. In this regard, the Council considered whether the shepherd's hut and the structure containing a kitchen and bathroom would comprise building, engineering, mining or other operations in, on, over or under land and therefore fall to be considered under section 171B of the Act.
4. The Council found that the kitchen/bathroom structure was operational development which fell to be considered under section 171B(1) and issued a split decision, confirming the operational development, comprising the erection of the kitchen/bathroom structure, was lawful but that the use of the land was not lawful. My consideration of this appeal is therefore limited to the lawfulness of the shepherd's hut and the use of the land for holiday accommodation. The use of holiday accommodation is a residential use, which is temporary for specified occupiers, i.e., holiday makers and so I shall consider the appeal on this basis.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a LDC in part was well-founded.

Reasons

6. An application under section 191(1) of the Town and Country Planning Act 1990 (as amended)(the 'Act') provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful; or (c) any other matter constituting a failure to comply with any condition or limitation to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.
7. Section 191(2) of the Act sets out for the purposes of the Act, uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. Section 171B(1) of the Act states where there has been a breach of planning control consisting in the carrying out without planning permission of building...operations...no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Section 171B concerns the change of use of a building to use as a single dwellinghouse, which is not relevant in this case and section 171B(3) states, in the case of any other breach of planning control, no enforcement action may be taken after the period of ten years beginning with the date of the breach.
9. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development was lawful on the date of the LDC application.
10. Section 55 (1) of the Act sets out the meaning of development. Development comprises two limbs: (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any material change in the use of any buildings or other land.
11. With respect to the shepherd's hut, this appeal will turn on whether the shepherd's hut is operational development and if so, whether it comprised ancillary operational development which an enforcement notice could have required the removal of.
12. The appeal will also turn on whether the use of the appeal site for residential holiday use occurred on or before 15 May 2011¹ and, if so, whether it continued without significant interruption for at least 10 years thereafter.

¹ Namely 10 years prior to the date of the LDC application.

Whether the Shepherd's Hut is operational development: The first limb

13. The shepherd's hut (the hut) is of modest size, measuring around 4.5m by 2.3m by 2.5m. The appellant states that the hut was constructed for them by local craftsmen. The hut has glazed windows, and is fitted with a wood burner and flue, lighting, cupboards and beds, one of which is fitted to one side of the hut and can be pulled down when required. There are no wash facilities or cooking facilities within the hut.
14. The siting of a caravan is generally held to constitute a use of the land and not operational development. However, neither party suggests the shepherd's hut comprises a caravan and, given the lack of facilities within the hut for human habitation, it is unlikely in my view, to meet the definition of a caravan in law.
15. Section 336(1) of the Act defines a building as including 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. The main characteristics of a building, as found in *Cardiff Rating Authority v Guest Keen Baldwin's Iron & Steel Co Ltd* [1949] 1 KB 385 and *R (oao Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (admin), as a matter of fact and degree, are (a) physical attachment, (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. No one test is conclusive.
16. Given its modest size and mobile design, it seems likely the hut would have been constructed off site and delivered to the site in its finished form. The wheels of the hut rest on wooden blocks, placed on the ground. The hut is not physically attached to the ground but appears held under its own weight. The hut has a tow bar and could be easily moved subject to the availability of a suitable vehicle. The hut is not connected to services, with lighting supplied by solar panels affixed to the roof of the hut and a wood burner used to generate heat.
17. During my visit, I saw that there was a lack of grass beneath the hut, which suggests the hut has been located in the same place for some time. However, I am mindful the relevant date is the date of the LDC application, not my site visit. The appellant states they sited the hut at the site in 2015, which suggests a degree of permanence. However, it is not clear from the evidence whether the hut has been moved and if so, where and with what frequency.
18. Given the modest size of the shepherds hut and its mobility, I consider, as a matter of fact and degree, it does not constitute a building and so the immunity period set out under section 171B(1) does not apply. Since I have found the shepherd's hut is not operational development, it is not necessary for me to consider whether it comprised ancillary operational development which an enforcement notice could have required the removal of. Nevertheless, the siting of a shepherd's hut as part of a residential holiday use is a use of land, which I shall go on to consider the lawfulness of.

Whether the use of the land would have been lawful: The second limb

19. In their planning statement, the appellant describes Furlong Shaw as a small piece of woodland situated on Merrion Farm. It is stated that, in the 1960s, the southern half of this land was cleared and turned into cattle grazing. The

appellant also suggests on their appeal form that the land was a piece of open woodland which was used for family camp fires and camping.

20. However, it is not clear from the evidence how often the land was used for family camp fires and camping, when its use for camping started, whether such use would have constituted a material change of use and if so, whether the material change of use would have been permitted by Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), which permitted temporary buildings and uses.
21. The appellant states they sited the shepherd's hut and kitchen/bathroom building at the site 'since' June 2015 and have had many guests who come year after year, or multiple times a year. However, this is less than 10 years prior to the submission of the LDC application and so the material change of use of the land from agriculture to a residential holiday use would not have been immune from enforcement action at the date of the LDC application.
22. The appellant suggests they could legally live in the shepherd's hut or rent it out as a dwelling house. However, it is not clear on what basis the appellant considers this to be so. The shepherd's hut does not appear to be in the curtilage of a dwellinghouse, or on land which has been used for purposes incidental to use as a dwelling and so its occupation would be unlikely to be part and parcel of a lawful residential use. As such, it seems unlikely the appellant or anyone else, could lawfully use the shepherd's hut for residential purposes.
23. Thus, I find on the balance of probabilities, the siting of the shepherd's hut and the use of the land for residential holiday use was not lawful at the date of the LDC application and the appeal should fail.

Conclusion

24. 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 shepherd's hut and the use of the land for holiday accommodation 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.

M Savage

INSPECTOR