



Appeal Decision

Site visit made on 22 September 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 30 October 2020

Appeal Ref: APP/K2230/X/19/3242863

Great Gorse Shaw, Leywood Road, Meopham, Kent DA13 0UH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Ms Amber Wilson against the decision of Gravesham Borough Council.
 - The application Ref 20190867 is dated 16 August 2019.
 - The application was made under section 191(1)(a) 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 *'The use of the land including the permanent building thereon for recreational, leisure and family holiday use by the owner of the land.'*
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Decision

1. The appeal is dismissed.

Background

2. The site comprises an area of woodland accessed from a narrow country lane. Immediately in front of the entrance, a solid wooden gate adjoining close-boarded timber fencing, is an area deep enough to place a car. Behind the gate is a lengthy track surrounded by woodland. The track is of sufficient width to take a vehicle to and from a small, somewhat dilapidated, single storey building. It is an aged building, partly faced with concrete and partly timber, with wooden doors, windows, and a tiled roof. All are seemingly in need of treatment or repair. A metal chimney protrudes from the roof, and I noted that pieces of wood cut from logs had been piled up against two sides of the building. Two dustbins were present.
3. Situated beyond this building, and separated by a tree lying between, was a much smaller, largely open-sided structure. It would seem likely that this building would have once provided shelter, probably for storage purposes, but now is in need of substantial repair.
4. The current owner has submitted an application for a certificate of lawfulness claiming use of the land and a "permanent building" for "recreational, leisure and family holiday" purposes. In such instances S171B (3) of the 1990 Act indicates that where there has been a breach of planning control involving the change of use of land no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Here, given that the application for the certificate of lawful use (LDC) was made on 16 August 2019, the appellant must successfully demonstrate, on the balance of probability, that

the breach of control commenced ten years before, ie prior to 16 August 2009 (hereinafter referred to as "*the material date*") and has continued since.

5. In an appeal under s195 of the 1990 Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of that applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

6. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

7. I understand that the current owner of the land – also the appellant – purchased it in August 2017. Prior to this it was owned by a Mr P L Rowe who, by way of a Statutory Declaration dated July 2017, says that since he purchased the land in 1978 he had used it along with the buildings thereon for personal, recreational and leisure use, and for family holidays. The appellant says that she has continued to use the land and building for exactly the same purposes since she acquired it.
8. At the application stage, following a formal consultation exercise undertaken by the Council, interested parties responded with comments such as "*the building was empty and unused for most of the last 19 years*", "*now the property has changed hands a name plate and post box has appeared and a high fence*", "*last year a new higher fence was erected and vehicles started to use the access and be parked outside and in front of the building*", "*the land has been dug up and hardcore laid*" and "*the building has not been used for residential or domestic use.*"
9. In response the appellant has made the following points, saying "*the applicant does not deny making the building more comfortable, but not living there*", "*hardcore has been used to fill in potholes*" and "*the chimney was installed as a requirement of the replacement wood burner*". She also describes a list of items present within the building as evidence of its use, such as a table and chairs, a wardrobe, shelving, a kettle and camp beds, along with a child's swing outside. I was not able to view inside the building at my site visit but, nonetheless, whether or not such items are now present does not confirm or corroborate the manner of Mr Rowe's frequency or infrequency of occupation, or the nature for which he used the land between before the material date and up to the time he sold it in 2017. Any furnishings and storage within the building, along with a new gate and fencing installed for security purposes only gives an indication that the appellant has started to upgrade the site.
10. I am particularly guided here by the Sales Particulars for the land provided to me, and presumably compiled by agents for its sale in 2017. Produced by 'Woods 4 Sale' it describes the type of woodland and says that within the wood is a wide, soft track which runs from the gate to a "storage shed" (measuring approximately 5m x 7m). In addition, the text mentions a second storage shed and that there is water available. A photograph of one of the buildings is included which, from my observations, I can confirm is the larger building. The

site plan attached to the particulars also indicates the positioning of the two "storage sheds" and these locations correspond with my site visit findings. A second photograph also shows the access point, as it was before the appellant installed the wooden gate and fencing.

11. On the basis of the evidence before me I would consider that the appellant purchasing the land represents a new chapter for the site in planning terms. Certainly, a degree of intent has been shown as to the appellant's desired future use of the main building, but this must be set aside from what appears to be the situation prior to its recent purchase. To my mind, from the evidence before me, and the likelihood that the building, when purchased by the appellant was in a worse physical state than now, and also due to its very limited size of some 35 sqm, it does not convincingly suggest that the building was used for "family holidays", as is claimed. It has since undergone some works and, from my observations, I would not now describe either building as a "storage shed". I consider that the smaller building, as described, has likely since deteriorated further.
12. Weighing up the evidence I am not persuaded that Mr Rowe's assertions are sufficiently precise and unambiguous as to show that the use as claimed commenced before the material date or that it was continuous up until the time the application was made. The onus is on the appellant to demonstrate, on the balance of probability, that, at the date of the application, the use had acquired lawfulness due to its immunity from planning enforcement action. In essence, I find that the burden of proof has not been satisfactorily discharged in this instance.
13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development for the use claimed 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.

Timothy C King

INSPECTOR