



Appeal Decision

Site visit made on 12 March 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2024

Appeal Ref: APP/K2230/X/23/3319068

Land lying to east of Rhododendron Avenue, Meopham, Gravesend, Kent DA13 0TT

- 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 Ms Lorraine Higgs against the decision of Gravesham Borough Council.
- The application ref 20221107, dated 11 October 2022, was refused by notice dated 27 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 stationing of a caravan on land for residential occupation.

Summary decision: The appeal is dismissed.

Background and Main Issue

1. The description of development suggests that the application was to determine whether the land was in lawful use for the stationing of a caravan for residential occupation at the date of application, being 11 October 2022 (the relevant date).
2. In order to become lawful in accordance with section 171B of the Town and Country Planning Act 1990 (as amended) (the Act), the use must have continued for a period of ten years beginning with the date of the breach.
3. Section 191(4) of the Act allows the local planning authority to modify the terms of the application, and to issue a certificate in somewhat different terms to those applied for, so that it accords with the facts and evidence. This power is also granted to the Secretary of State or an Inspector in the case of an appeal. I will take that into account in coming to my decision.
4. The burden of proof on an application for an LDC is on the appellant, with the relevant test of the evidence being on the balance of probability. Evidence does not need to be corroborated by independent evidence to be accepted, but does need to be sufficiently precise and unambiguous, even if there is no evidence to contradict it.
5. Supporting evidence indicates that the appellant is seeking to demonstrate the lawfulness of residential occupation of the caravan independent of any neighbouring dwelling. The Council considered the application on that basis and so shall I.
6. The main issue is whether the decision of the Council to refuse the LDC was well-founded.

Reasons

7. In terms of considering the lawful use of the appeal site, I will first consider the use of the land, before turning to consider the use of the caravan itself.
8. My attention has been drawn to a decision reference REF/2020/0531 & 0532 dated 16 December 2021 of the First Tier Tribunal of the Property Chamber, Land Registration relating to the ownership of the land (the Tribunal). That related to an application for first registration of possessory title to an area of land that appears to correlate with the area identified on the plan attached to the application for this LDC (the site). It concerned occupation of the land over a period to claim adverse possession. In order for the appellant to claim adverse possession, I understand that she needed to demonstrate occupation of the land for a period that covered, or at least overlapped, the period now being claimed for independent occupation of the caravan by her son.
9. In relation to the residential occupation of the caravan, the Tribunal referred to the possibility that "if sufficient time passes it may acquire immunity from planning enforcement for unauthorised use" and refers to evidence relating to this. Nevertheless, it did not consider whether that was the case; that is the subject of this application and appeal for an LDC.

Use of the land

10. Rhododendron Avenue is a narrow road through a valley with residential development comprising houses and caravans in large plots to either side. The appeal site is located to the rear of one of these plots, Distarti, that is in separate ownership and occupation. There is an access drive to the site from the road to one side of Distarti and, to the other, is another property known as Amankila. There is a small section of mutual boundary shared between Amankila and the appeal site. The appeal site comprises an area of woodland with a number of cleared areas. In the corner closest to Amankila is located a touring caravan. Up to the relevant date I understand that Amankila comprised a twin unit mobile home and its garden, occupied by the appellant.
11. To the rear and sides of the site are houses and their gardens. The topography and woodland means that there is limited visibility between the site, particularly the lower part where the caravan is located, and houses to the rear.
12. According to the decision of the Tribunal, the appellant purchased Amankila on 12 June 1997. At that time, the appeal site was overgrown. They occupied Amankila with their family and sourced wood for fuel from the site and used the land for recreation purposes, such as BBQs, picnics, for children's play and exercising their dogs.
13. The appeal site was fenced sometime in the autumn of 2006 to early 2007 and the land cleared. It continued to be used by the family for play and recreation. A climbing frame and trampoline were brought onto the land at some point for that purpose. A wooden table and chairs were similarly used to sit out on the land. These were referred to in a Statutory Declaration dated June 2009 (SD2009) by the appellant, according to the Tribunal. The Tribunal describes the land as being open to Amankila with metal steps providing access between the two areas, that replaced some previous rough steps or footholds.

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14. Some cleared areas on the site contain concrete bases, including that on which the caravan is situated, that are presumably a remnant of previous development. The climbing frame, trampoline, table and chairs remain on the site.
 15. Evidence submitted to the Tribunal by a daughter of the appellant shows that she used the site to relax with friends and helping to maintain the land with her father. She has memories of BBQs, garden sorting days and riding mini motorcycles on the land. I understand that timber was taken from this land for use in heating the mobile home at Amankila. Similar evidence was also provided by the appellant's father and others.
 16. Evidence from the appellant suggests that the woodland was used by the owners of Amankila as additional amenity land to their garden. It indicates that the land around the caravan was occupied along with Amankila.
 17. The Tribunal also referred to a car that was owned by the appellant's partner being located beside the caravan and not moved for many years. That appears to have been in this location at the time of the Tribunal.
 18. Amankila now appears to be in the process of replacement with a dwellinghouse. In ownership terms it appears to have been split and physically divided by a fence. However, that appears to have taken place after the relevant date.
 19. Taking all of the above into account and on the balance of probability, I consider that the land was used for amenity purposes by the occupiers of Amankila for the period from the land being cleared to the relevant date.

Use of the caravan

20. According to the Statutory Declaration provided by the appellant dated 23 August 2022 and that of her son dated 1 September 2022, the caravan was brought onto the site in 2008 and sited on the concrete plinth, where it remains. Electricity was fitted, including lighting between Amankila and the caravan, and fences around the caravan for weather protection and privacy. They state that the son asked to move into it in 2008 and, after a period of thought, his mother agreed. No date is specified as to when the son began occupation, although these Statutory Declarations say it was in 2008. Rent was paid, both in cash, and latterly via bank transfer, and by contributing toward maintenance of the land. They say he remained there for 12 years and moved to his current address in 2021.
21. That evidence differs from that set out in the Tribunal. It accepted that the caravan was moved to that location in 2006 rather than 2008. There was correspondence with the Council requesting that it be removed in 2008, and indicating the appellant intended to use it for the storage of garden tools. Based on SD2009, the Tribunal accepted that the caravan was being used for stays by family and friends. The Tribunal found that the son probably moved into the caravan in late 2009. Given that Statutory Declaration and letters from the Council were contemporaneous with the period in question, I consider late 2009 to be the most likely date for any residential occupation of the caravan to have begun.
22. In terms of moving out of the caravan, there is also some discrepancy between the Statutory Declarations of 2022 and the Tribunal. That summarised the

son's evidence that he moved out of the caravan in 2020. He acknowledged in evidence to the Tribunal that he had largely ceased to live in the caravan by 10 June 2020, when the Tribunal said photographs were taken by a visitor to the land.

23. Based on that evidence, it appears that the appellant's son moved into the caravan in late 2009 and had largely ceased to live there by 10 June 2020. That suggests he could have occupied the caravan for a period in excess of ten years. I will now turn to the nature of his occupation.
24. The appellant's evidence states that her son lived in the caravan and did not rely on the house for services and facilities, including meals and laundry. He paid rent for the caravan, which is distinguished from a "general contribution to housekeeping" in the Tribunal. It is acknowledged that he did visit the house for meals from time to time but only in the same way as other family and friends visiting from their homes.
25. That evidence is disputed by the Council and other parties in suggesting that the caravan did not contain the necessary facilities for occupation. There are also suggestions that it was in a poor condition, with damp and rot. I understand that it contains a basic toilet, shower and cooking facilities. Electricity was connected to the caravan from Amankila. It also has access to gas and water. Lighting was provided on sections of the path between Amankila and the caravan, and a sensor light was located on the caravan. Whilst there are some signs of damp and rot within the caravan, it appears to remain habitable. Fencing was erected around the caravan for privacy.
26. The Tribunal summarises the evidence of the occupant at that time. This is that he lived and slept in the caravan, but regularly went for family meals at Amankila. He was also able to use bathroom and laundry facilities at Amankila as and when he wished. Based on that evidence, the Tribunal describes the caravan as his "semi-independent home".
27. As such, basic facilities required for residential occupation were available. The Council's, and others', evidence appears to indicate they consider the size and style of caravan and its facilities make it less than probable that it was occupied as a separate residential unit. The evidence before the Tribunal appears to suggest that the caravan was occupied by the appellant's son, but there was a degree of reliance on Amankila for certain services and facilities such that it wasn't occupied truly independently.
28. For these reasons and on the balance of probability, I consider that the caravan was not occupied as an independent residential unit. It was, however, located on the land for a period of ten years, as set out above, and occupied by the appellant's son as part of the family's occupation of Amankila.

Conclusion

29. For these reasons, the evidence is not sufficiently precise and unambiguous to demonstrate the use of the land for the stationing of a caravan for independent residential occupation for the relevant period. On the balance of probability and based on the evidence submitted, the land was used for amenity purposes by the occupiers of Amankila, with the caravan occupied as part of that use, for a period of ten years prior to the relevant date.

30. Taking account that the appellant is seeking to demonstrate the lawfulness of residential occupation of the caravan independent of Amankila, for these reasons I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the stationing of a caravan on land for residential occupation was well-founded. As a result, the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act as amended.

Formal Decision

31. The appeal is dismissed.

AJ Steen

INSPECTOR