



Appeal Decision

Site visit made on 11 October 2016

by Aidan McCooey BA MSc MRTPI

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

Decision date: 18 November 2016

Appeal Ref: APP/L3245/X/ 16/3150793

Presthoke Caravan Park, Presthoke, Much Wenlock, TF13 6DQ

- 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 (LDC).
 - The appeal is made by Mr S Nedic against the decision of Shropshire Council.
 - The application Ref 15/05447/CPL, dated 5/11/2015, was refused by notice dated 3 February 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is use of land for the siting of static caravans throughout the year for the purposes of human habitation.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the proposed use which is considered to be lawful.

Procedural matters and Background

2. An LDC in relation to the use of the site (Presthoke Caravan Park, Presthoke, Much Wenlock, Shropshire) was granted by the Council on 28 August 2015¹. The lawful use of the site was set out in the first schedule as:

"Application for LDC in respect of existing use as a caravan site and occupied as such by the Caravan Club 1970".

3. I shall refer to this LDC as the extant LDC in this decision.
4. The reason given by the Local Planning Authority for its decision was:

"The evidence submitted demonstrates that, on the balance of probability, the land outlined in red ink on the submitted site location plan has been used as a caravan site (not for permanent residential occupation) for a continuous period of at least ten years preceding the date of the application. The use is therefore immune from enforcement action by virtue of Section 191 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991), and hence is lawful."

5. The application the subject of this appeal was refused for the following reason:

¹ Application no. 15/01944/CPE

"The existing lawful use of the Presthope Caravan Site, as set out in the LDC ref. 15/01944/CPE, is as a caravan site and occupied as such by the Caravan Club 1970. By reference to the Articles of Association and byelaws of the Caravan Club, and other information available, it is not considered that the occupation of the site by the Caravan Club would permit its use as a site for static caravans for the purposes of human habitation throughout the year. As such the existing LDC does not provide for such use, and planning permission for such use would be required".

Main Issue

6. This is whether, on the balance of probability, the decision not to grant a LDC was well-founded, having regard to the lawful use of the land.

Reasons

7. Section 191 (6) 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. The extant LDC is therefore the starting point for the consideration of this appeal. An LDC can only be interpreted on its face without recourse to other extraneous material or further advice from the Local Planning Authority.
8. Section 191 (5) sets out what an LDC shall contain and this includes (b) describe the use, operations or other matter in question. The Planning Practice Guidance advises that 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 so as to define it unambiguously and with precision.
9. The Council's case is provided in terms of the officer report on the application. The Council imports a definition of a "caravan" and "caravan club site" from the caravan club byelaws. It is claimed therefore that occupation by the caravan club restricted the site to members and use by touring caravans or motorhomes and not for permanent occupation. That is as maybe. However, the term caravan has an established legal definition in planning caselaw² and precedent. It cannot be qualified by using a club definition, even if that is the club that occupied the site. The proper manner to restrict the use of the site would have been to set out the lawful use in the LDC and include all the restrictions that the Local Planning Authority are now seeking to infer from the phrase *"and occupied as such by the Caravan Club 1970"*. For example, the LDC could have been framed as "use as a caravan site for touring caravans, motorhomes, trailer tents or folding campers and not for permanent occupation" or words to that effect. The number of caravan pitches could also have been specified. There is no reference to any of these matters in the first schedule of the extant LDC. The only reference at all is to *not for permanent residential occupation* in the reason for granting the LDC. There is not even a restriction to use for the stationing of caravans that meet the caravan club definition of a caravan.
10. The Act states that caravan site has the meaning given in section 1(4) of the Caravan Sites and Control of Development Act 1960. The persons or organisation in occupation of the site cannot alter this definition. The Local Planning Authority's argument that this limits the type of caravan that can be stationed on the site and prohibits permanent occupation of those caravans cannot therefore be supported.

² The appellant refers to Wyre Forest DC v Secretary of State for the Environment and Another 1990, which concluded that there was no basis to depart from the statutory definition of a caravan and caravan site in the Caravan Sites and Control of Development Act 1960

11. There is no such entity as *Caravan Club 1970*, which is acknowledged as an incorrect term by the Council. This error implies that the Council merely utilised the exact wording on the original application without any proper consideration of the implications of this for the lawful use of the site. I have concluded that the Council's reliance on the articles and byelaws of the club and other information available on the club's website is unfounded. There is therefore no need to consider the extent of any restrictions that would be in place as a result of them, as explored by the appellant.

Conclusion

12. The Council claims that the reference to the occupation by the Caravan Club in the extant LDC limits both the type and permanent occupation of caravans on the site. This is supported by reference to the articles and byelaws of the club and other information available on the club's website. I have two principal difficulties with this approach. It seems to infer an occupancy restriction to a lawful use of land, which cannot be correct. It also requires the holder of the LDC to research the articles and byelaws of the caravan club in order to understand the scope of the extant LDC. This cannot be correct either.
13. I conclude that the Local Planning Authority has granted an LDC for use as a caravan site without restriction on the type of caravan or permanent occupation of said caravans. In these circumstances, the appeal must succeed and the LDC sought should be granted.

A L McCooey

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 5 November 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in pink on the plan attached to this certificate would be lawful within the meaning of section 192(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

A valid lawful development certificate exists for *Application for LDC in respect of existing use as a caravan site and occupied as such by the Caravan Club 1970* on the land that is the subject of the application. The proposed use would fall within the definition of a caravan site and there being no effective restrictions on the use of the lawful caravan site by virtue of the extant certificate, the proposed use would be lawful at the date of the application.

Signed

A L McCooey

Inspector

Date **18 November 2016**

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First Schedule

Use of land for the siting of static caravans throughout the year for the purposes of human habitation

Second Schedule

Land at Presthoke Caravan Park, Presthoke, Much Wenlock, Shropshire, TF13 6DQ

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would be lawful, on the certified date and, thus, would not be liable to enforcement action, under Part 7 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **18 November 2016**

by Aidan McCooey BA MSc MRTPI

Land at: Presthope Caravan Park, Presthope, Much Wenlock, Shropshire, TF13 6DQ

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