
Appeal Decision

Site visit made on 18 July 2017

by Simon N Hand MA

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

Decision date: 25 July 2017

Appeal Ref: APP/W1715/X/17/3170288

Hillview Manor Park, Winchester Road, Fair Oak, Hampshire, SO50 7HD

- 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 Anthony Barney against the decision of Eastleigh Borough Council.
 - The application Ref U/16/77954, dated 26 January 2016, was refused in part by notice dated 18 May 2016.
 - 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 land to be included within Hillview Caravan Park.
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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 existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was made for land to be included within the caravan park and was granted on 18 May 2016. However, the lawful use in the certificate was described as "use of the land for community use as a garden" and the address of the land was "Hillview Manor Farm". The appeal is on the basis that the application was to include the land within the caravan park for private recreational use by the residents, there is no community use, and that the site address is Hillview Caravan Park not Hillview Manor Farm.

Reasons

The correct name of the site

4. Following discussion with the Council they agreed they would be prepared to change the name to Hillview Manor Park and the use of the word Farm was just a typographical error. The appellant explains it was "understandably risky" to agree to the LDC being reissued to correct the error in the address. Like the Council I do not understand what risk was attached to the re-issue of the LDC,

but in any case the appellant has asked for the address to be changed to Hillview Caravan Park, which is the land registry address.

5. In fact the application described the site address as Hillview Manor Park, which is how the Council have consistently referred to the site and I can see no reason why the LDC should not be issued with that as the address.

The correct description of the use

6. There is no dispute that the land in question has been used as private gardens or for recreational purposes by the residents of the caravan park for a period of 10 years or more. That is what the residents say in their statutory declarations. The Council draw a distinction between that use and a wider use which would be part of the caravan site as a whole. The latter would imply the use of the land could be for anything that could lawfully be carried on at the caravan park, presumably parking cars, stationing caravans, storage, open space, gardens etc. The Council argue that is not what the evidence demonstrates has happened. The evidence is solely concerned with garden/recreational use by private residents, not a general caravan park use, and that a separate planning unit has been created, hence their description in the LDC as issued.
7. The application was for "*land to be included within Hillview Caravan Park*", which implies a general caravan park use. It was made clear in the application statement that they were not applying for a community use, but for a specific use (garden/recreational) that forms one element of the overall caravan park use. *Burdle*¹ is the leading judgement on planning units and the courts held there were three situations, the first being "*that whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered*". It seems clear to me the use as gardens or recreational land by residents of the caravan park is an ancillary activity to the use of the site as a residential caravan park as a whole.
8. The Council are in effect contending the land falls within the third situation identified in *Burdle* "*within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit*". I do not think the residents' use of the land as gardens can be said to be unrelated to their occupation of their caravans on the caravan park and I do not think that a separate planning unit had been created. As the appellant's agent argues this would imply the use could subsist if the caravan park use ceased, which is highly unlikely. The fact that the Caravan park's boundaries were agreed in 2006 and they excluded the land in question does not undermine the application, as it is accepted by the Council that the land was being used at that time as gardens. Had the boundary been extended to include the land in 2006 there would have been no need for the LDC application nearly 10 years later.
9. This brings me onto what the description in the LDC ought to be. Clearly there has never been a "community use" of the land in the wider sense of it being a community asset, or of it falling within the ambit of paragraph 70 of the NPPF

¹ *Burdle v Secretary of State for the Environment* [1972] 3 All E.R. 240, 244

which supports the creation of social, recreational and cultural facilities and services the community needs, which is the fear of the appellant. The Council make it clear they are referring to the communal use by the residents of the caravan park. I note that all the statutory declarations say the land has been used "*by occupants of the caravan site for private gardens/recreational purposes*", and the statement submitted with the application says "*the exact nature of the use has been for private gardens/recreational use*". I accept the application does muddy the water somewhat as it jumps between describing the use as private gardens and part of the caravan site. It also says the land "*can lawfully be used by the residents of the park*" implying a more general claim for all the residents, but nowhere does it suggest there is any communal use and makes clear in the last section that this is definitely not what is being applied for. On my site visit I saw the land was on top of a steep bank at the back of the caravan park, and appeared to be accessed solely between the caravans numbered 19-22, up steep steps. I do not think this supports the view it must therefore be separate to the main caravan park, but does support the idea the use has been privately carried on by a limited number of occupants, which seems to be the contention of the appellant when he made the application.

10. I have found that a separate planning unit has not been created, but it follows from the discussion above that I consider the lawful use of the land is exactly what the appellant and the occupiers have described it as: "*private gardens/recreational use*". Consequently while the land may not be a separate planning unit, it does not follow that its lawful use is simply an extension of the caravan park. As I describe above a general caravan park use implies much more than simply gardens and recreational use. There is no evidence the land has been used for anything other than as gardens or recreational space, so while I do not consider the description as community use to be accurate neither is land to be include within a caravan park.
11. I shall allow the appeal and issue a new certificate describing the use as "private gardens/recreational use". Any future change to that use may well require either planning permission or a fresh LDC.

Simon Hand

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 26 January 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: The land has been used as private gardens or for recreational uses for 10 years or more.

Signed

Simon Hand

Inspector

Date: 25 July 2017

Reference: APP/W1715/X/17/3170288

First Schedule

Use of the land as private gardens/recreational use.

Second Schedule

Land at Hillview Manor Park, Winchester Road, Fair Oak, Hampshire, SO50 7HD

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 25 July 2017

by Simon Hand MA

Land at: Hillview Manor Park, Winchester Road, Fair Oak, Hampshire, SO50 7HD

Reference: APP/W1715/X/17/3170288

Scale: not to scale.

