
Appeal Decisions

Site visit made on 13 May 2019

by Katie Peerless Dip Arch RIBA

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

Decision date: 22 May 2019

Appeal A: APP/B1415/X/18/3203560

Flamingo Park, East Street, The Stade, Hastings TN34 4AR

- 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 Flamingo Park Ltd. against the decision of Hastings Borough Council.
 - The application Ref HS/EX/18/00067, dated 24 January 2018 was refused by notice dated 5 April 2019.
 - 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 as an amusement park.
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Appeal B: APP/B1415/X/18/3209886

The Stade Family Amusement Park, East Street, The Stade, Hastings TN34 4AR

- 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 Flamingo Park Ltd. against the decision of Hastings Borough Council.
 - The application Ref HS/EX/18/00485, dated 24 May 2018, was refused by notice dated 9 August 2018.
 - 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 as an amusement park (sui generis).
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Decisions

Appeal A: APP/B1415/X/18/3203560

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.

Appeal B: APP/B1415/X/18/3209886

2. 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.

Main Issues

3. In both these cases the main issues are whether the Council's refusals to issue the certificates were well founded with respect whether the sites meet the definition of an amusement park as set out in Part B2 of Part 18 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order (2015) (GPDO).

Site and surroundings

4. The site for appeal A is an area of land on the seafront in Hastings adjacent to East Street, the main A259 trunk road. It includes various fairground rides, an indoor amusement arcade and, at the western side, a boating lake with an area for a bouncy castle at one side. The eastern part of the site is bounded by fences, railings and buildings and there is a pedestrian walkway running north south across the site between the boating lake and the fairground rides. The track of a miniature railway runs to the south and its station is just beyond the western tip of the site.
5. The site for Appeal B is smaller in area than that for Appeal A with the red line including only the eastern part of the site and omitting the area to the west of the eastern edge of the boating lake.

Reasons

Appeal A

6. There is no dispute that the boating lake and the amusement facilities have been operating on the site for many years and are, in themselves, immune from enforcement action.
7. The Council refused the application on two grounds; firstly, because it considers that the boating lake is a separate planning unit in a different use to the amusement areas. Class D2(e) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) defines assembly and leisure uses and includes '*a swimming bath, skating rink, or area for other outdoor sports or recreations, not involving motorised vehicles....*' and the Council maintains that this definition applies to the boating lake.
8. Secondly it submits that the site is not fully '*enclosed*' as set out in Part B2 of Part 18 of Schedule 2 of the GPDO which defines an amusement park as: '*an enclosed area of open land, or any part of a seaside pier, which is principally used (other than by way of a temporary use) as a funfair or otherwise for the purposes of providing public entertainment by means of mechanical amusements and side-shows; but, where part only of an enclosed area is commonly so used as a funfair or for such public entertainment, only the part so used shall be regarded as an amusement park*'. For these reasons it submits that the whole 'red line' area of the application site cannot be classified as an amusement park.
9. The appellants submit that the entire area has been historically considered as an amusement park and this has been reflected in previous descriptions used by the Council when determining planning permissions and Inspectors in appeal decisions. They consider that the use of the lake is more akin to an amusement park use than a D2 use and that the whole area is enclosed by various methods including fencing, low walls, bollards, landscaping and the miniature railway track that runs to the south of the site.

10. Turning firstly to the question of the use class, it seems to me that the line between a use described as a '*recreation*' and one which is an '*amusement*', which seems to me to be the difference between the two viewpoints put forward by the parties in this case, is a fine one.
11. Nevertheless, I consider that the activity on the lake is more akin to a fairground ride, albeit on water, which falls within the '*amusement*' category, rather than a sport or recreational activity, which is the wider context into which the D2(e) uses fall. The swan-shaped boats on the lake are propelled by mechanical means - pedalling by the passengers - and are perceived as one of the various amusement activities and rides that are taking place on this area of the seafront as a whole, with the lake not being used for any clearly distinct or unrelated purpose. I therefore find that the lake does not fall within the D2 class but is in the same use class as the other amusement rides within the red line on the application plan, thereby forming part of a planning unit in a single use.
12. The question then arises as to whether the activities within the 'red line' area can be considered to be '*enclosed*' in the terms of the definition in the GPDO. The great majority of the site boundary clearly falls within this description and the Council accepts that the eastern area, up to the eastern side of the walkway across the site, meets this test. It submits however, that the boating lake is only sporadically enclosed along the east and west sides and open to the south.
13. The appellants note that the north/south walkway in the middle of the site is not a public right of way and is part of the site as a whole. I have already concluded that the application site forms one planning unit in the same use and I therefore agree with the submission that footway does not, have a bearing on whether or not the east side of the boating lake is '*enclosed*'.
14. To the west, it is clear where the pavement to the A259 ends and the amusement area begins and, whilst the public can walk across the narrow end of the site at this point, there are low walls and fencing that separate the site from the land occupied by the miniature railway and other parts of the public realm. As with the walkway to the east, I do not consider that this short section of pathway across the site is in a different use to that of the remainder of the area and the unobstructed openings at either end do not mean that the site as a whole would not meet the GPDO definition of '*enclosed*'.
15. It is the case that there is no fencing or raised barrier on the south boundary of the site that would prevent public access to the edge of the boating lake. However, as previously noted, I have found that that the lake is part of the planning unit. The edge of the lake provides a physical demarcation that defines the limits of the unit. Beyond this, outside the application site, there are low walls, sporadic planting, and the miniature railway line that all also provide a separation between the site and other nearby uses.
16. In conclusion, I find that '*enclosed area*' in Part B2 of Part 18 of the GPDO does not necessarily mean that there must be a raised barrier or fence around the whole of the site for it to qualify as an amusement park. It seems to me that, in this case, there are clear visual indicators, including other development, that serve to define the limits of the site, confining the uses within it to a specific area and the test of being '*enclosed*' in the GPDO would be met. I find therefore that the appeal should succeed.

Appeal B

17. The application subject of this appeal was submitted to try and address the Council's concerns that the boating lake was in a different use class to the remainder of the amusement site. Although I have concluded in the Decision for Appeal A that this is not the case, the Council nevertheless also considers that the site, now limited to the area to the east of the lake is not '*enclosed*' as required by the GPDO.
18. As I have concluded that Appeal A should succeed, much of the reasoning set out in that Decision will also apply here. Whilst the Council accept that most of the site is enclosed, it still maintains that the walkway between the lake and the eastern side of the buildings is not within the planning unit. However, I have already concluded that it is. Beyond the walkway there is planting, low walls and the edge of the lake which, for the reasons outlined under Appeal A, seem to me to enclose the amusement area and separate it physically from the lake. Consequently, even if the site area is reduced to exclude the lake, the remainder would remain as an amusement park as defined in the GPDO. This appeal therefore also succeeds.

Conclusions

19. For the reasons given above I conclude, on the evidence now available, that the Council's refusals to grant certificates of lawful use or development in respect of a use as an amusement park were not well-founded and that both appeals should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Katie Peerless

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 24 January 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The site meets the definition of an amusement park as set out in Part B2 of Part 18 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order (2015).

Signed

Katie Peerless
Inspector

Date: 22 May 2019

Reference: **APP/B1415/X/18/3203560**

First Schedule

An amusement park

Second Schedule

Land at Flamingo Park, East Street, The Stade, Hastings TN34 4AR

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 22 May 2019

by Katie Peerless Dip Arch RIBA

Land at: Flamingo Park, East Street, The Stade, Hastings TN34 4ARS

Reference: APP/B1415/X/18/3203560

Scale: NTS



Lawful Development Certificate

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Signed

Katie Peerless

Inspector

Date: 22 May 2019

Reference: **APP/B1415/X/18/3209886**

First Schedule

An amusement park (sui generis)

Second Schedule

Land at The Stade Family Amusement Park, East Street, The Stade, Hastings TN34 4AR

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