



Appeal Decision

Site visit made on 28 January 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 22 February 2020

Appeal Ref: APP/R1845/X/19/3230753

Land at Captains, Stone Hill, Stone, Kidderminster DY10 4AJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Mrs Gaynor Gillespie against the decision of Wyre Forest District Council.
 - The application Ref 19/0224/CERTP, dated 11 April 2019, was refused by notice dated 7 June 2019.
 - The application was made under section 192(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is the proposed storage of a maximum of thirty-nine (39) caravans.
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Preliminary Matters

1. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
2. For the avoidance of doubt, the planning consequences of the use are only relevant insofar as they enable an assessment of the character of the use and any off-site effects.

Main Issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

4. The site is lawfully used for the storage of up to 15 caravans¹. The appellant is seeking to establish that increasing the storage to a maximum of 39 caravans would be lawful. The Council refused to grant an LDC as it was considered the proposed use would amount to a material change of use by virtue of intensification.

¹ Ref 1165/04 dated 7 February 2005.

5. The Courts have held that intensification does not amount to a material change unless and until the fundamental character of the use changes. It applies when the only way to distinguish between the former and present uses is in terms of scale. The principle was reaffirmed in *Hertfordshire CC*², where the Court of Appeal held that the test was whether there had been a change in the character of the use. In assessing whether there has been a change of character, the impact of the use on other premises is a relevant factor. It is necessary, on the particular facts, to consider both what is happening on the land and its impact off the land when deciding whether the character of the use has changed.
6. The appeal relates to a parcel of land located towards the edge of the urban area. It is accessed via a driveway from Stone Hill (the A448). The site is set back from the road and lies to the south of a substantial detached dwelling and its grounds, which is well-screened by a conifer planting belt. There are further evergreen tree belts to the west and at the access with the main road. There is also a large building adjoining the site to the east. The result is that views to the site from public viewpoints, including the footpaths to the north and west, are limited.
7. At present the site can lawfully accommodate 15 caravans for storage but there is no restriction as to where on the site these should be sited. Hence, they could be spread across the site, concentrated in a small area or placed around the extremities. While the proposal would double the numbers of caravans stored, this would not necessarily change the character of the use. The land would still be used for the storage of caravans and these would be sited within the site boundaries of the existing lawful use. There is no residential use of the caravans and so there would be proliferation of domestic paraphernalia. I am satisfied that the proposed increase would not lead to a material change in the character of the land.
8. It is also necessary to consider off-site impacts as explained above. The site is relatively well-screened and, in my judgement, the increased number of caravans in storage would not have a materially greater visual impact than 15 caravans spread across the site, as allowed under the existing LDC.
9. The increased number of caravans would result in more activity as people drop off and remove their unit for use. However, the level of activity is unlikely to lead to any adverse effects. There is no suggestion by the Council that the increased storage at the site would lead to off-site effects such as noise and disturbance.
10. I have considered the likely traffic generation and the effects on the highway network. The appellant explains that people storing their caravans at the site remove them on average five or six times a year, with Easter and the August bank holiday being the most popular periods. Some of the caravan owners remove them for prolonged periods during the summer months. I accept that the removal and return of the caravans is likely to be spread across the year, as opposed to being concentrated over shorter timescales. The A448 is a relatively busy road with a 50mph speed limit. However, the splay at the site access allows adequate visibility and there is no evidence that the increased use of the access, as described, would have any adverse consequences for highway safety or the road network in general.

² In the case of *Hertfordshire CC v SSCLG & Metal and Waste Recycling Ltd* [2012] EWCA Civ 1473.

11. The Council draws my attention to *R (oao Childs)*³. That case concerned the refusal of LDCs pursuant to s192 of the 1990 Act as amended for an increase in the number of caravans for residential use. The issue before the Court was whether a mere increase in numbers could constitute a change of use. It was held that an increase in the number of caravans was capable of amounting to a change of use which might be material. This case is relevant in that it establishes intensification can amount to a material change of use. However, the circumstances can be distinguished from the appeal before me. The caravans in question were for residential use as opposed to storage and the site characteristics were such that it was concluded the increase would cause the landscape to take on a materially different character, which is not my conclusion in this instance.
12. The Council refers to an appeal decision on the site for the storage of a maximum of 52 touring caravans⁴. The Inspector dismissed the appeal stating that the site can be seen from a number of public vantage points. While the tree belts were acknowledged, it seems that the Inspector was concerned about their removal at some point in the future. However, even if the trees were removed, in my judgement, the increase in the number of caravans would not have an adverse visual impact. As set out above, the site is set back from the road and is partly screened by other development. The land is already occupied by caravans that could be placed anywhere on the site. An earlier appeal decision is also referenced⁵, which appears to reach a similar conclusion. However, both Inspectors were making a judgement in respect of the effect of the development on the Green Belt. It is not appropriate for me in the context of this appeal to apply the Green Belt tests. My consideration is confined to whether the fundamental character of the use would change, having regard to off-site effects.
13. The proposal would result in at least double the existing number of caravans being stored on the site. However, the increase in the scale of the use would not reach the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it would result in a change in the definable character of the use. Therefore, it would not constitute a material change of use by virtue of intensification.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a "proposed storage of a maximum of thirty-nine (39) caravans" was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Decision

15. 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.

Debbie Moore Inspector

³ *R (oao Childs) v First Secretary of State and Test Valley Borough Council* [2005] EWHC 2368 (Admin).

⁴ APP/R1845/A/09/2118087 dated 18 March 2010.

⁵ APP/R1845/A/05/1189962 dated 3 January 2006.



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 11 April 2019 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, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The site is lawfully used for the storage of up to 15 caravans. The proposed increase in the scale of the use would not reach the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it would result in such a change in the definable character of the use that it would amount to a material change of use by virtue of intensification.

Signed

Debbie Moore

Inspector

Date 22 February 2020

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First Schedule

The proposed storage of a maximum of thirty-nine (39) caravans

Second Schedule

Land at Captains, Stone Hill, Stone, Kidderminster DY10 4AJ

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 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 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 22 February 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

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Scale: NTS

