



Appeal Decision

Site visit made on 28 January 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 25 March 2020

Appeal Ref: APP/X1545/X/19/3228833

Steeple Bay Holiday Park, Canney Road, Steeple, Essex CM0 7RS

- 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 [hereafter referred to as "LDC"].
 - The appeal is made by Park Holidays UK Ltd against the decision of Maldon District Council.
 - The application Ref LDE/MAL/18/01085, dated 5 September 2018 was refused by notice dated 28 November 2018.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as '*Continuous occupation of holiday caravans 1 March – 30 November in breach of condition No 1 attached to planning permission ECC/MAR/61/56 dated 5 January 1966*'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 5 September 2018. The matter to be decided upon, therefore, is whether, under s191 of the 1990 Act, the use would have been lawful on this date as no enforcement action could have been taken in respect of it, and that the extent of the use did not constitute a contravention of the requirements of any enforcement notice then in force.
3. In an appeal under s195 of the Act against the refusal of a LDC the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant.
4. In this particular instance, on 27 November 2017, the Council served a Breach of Condition Notice (BCN) on Park Holidays in respect of the Steeple Bay Holiday Park being in breach of condition 1 of planning permission ECC/MAR/61/56. This condition restricted occupation of the caravans stationed at the site during certain times of the year. The notice required, within 28 calendar days of the date of service, that the said breach shall cease.
5. The appellant has drawn my attention to a typographical error in the BCN, in that the specified date of the planning application referred to is incorrect. I can confirm that this is the case and, although no right of appeal was available to

the recipient, it does not appear that the Council subsequently initiated proceedings in the local magistrates court in view of any non-compliance with its requirements.

6. The relevant date of the LDC application is 5 September 2018 and, in the absence of any successful high court challenge as to the legality of the BCN, the notice was in force on this date.

Main Issue

7. In the circumstances the main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

8. S191(3) of the 1990 Act says that any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if, under sub-section 3(b), *"it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force."*
9. A LDC cannot, therefore, be granted where it contravenes the requirements of a BCN in force, and this is a case in point.
10. The appellant argues that, as a result of a typographical error in the BCN, with an incorrect date stated, no BCN exists. Further, in the Council's case report, I also note that the actual BCN ref no. has been misquoted. These are somewhat careless errors but, as regards the thrust of the BCN itself, the planning permission from which the BCN flows has been referenced correctly and the condition's wording is also correct. The error relates only to the year the said permission was issued, with the year stated in the notice as 1961 rather than 1966. Otherwise, the BCN is quite clear as to what is at issue.
11. The Council has not offered any evidence of its own to rebut the appellant's case that the planning permission had been breached for approximately 40 years due to non-compliance with the condition. Nonetheless, even were I to find the appellant's evidence as sufficiently precise and unambiguous to confirm, on the balance of probabilities, that the beach was effectively immune from enforcement action, the fact that a BCN is in place, which has not been tested in the courts and has thereby taken effect, means that the requested LDC cannot legally be issued. It is not for the Secretary of State to adjudicate on the legality or otherwise of a BCN; there is no right of appeal against its service. That, instead, is a matter for judicial review.
12. Finally, I understand that, in April 2018, a s73A application (ref 18/00465/FUL) was submitted to the Council in an attempt to regularise the extent of the use and secure occupation of the holiday caravans between 1 March and 30 November (inclusive), annually. In October 2018, some seven months before the LDC appeal was lodged, planning permission was granted for the use. As such, the use is now governed by this permission, not that originally granted in 1966. In the circumstances the purpose of the LDC appeal is unclear given that the requirements of the BCN have effectively been overtaken by events and are no longer in force. The current appeal is therefore unnecessary in terms of the planning position.

13. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a LDC was well founded, and the appeal does not succeed.

Timothy C King

INSPECTOR