



Appeal Decision

by **K R Saward Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 06 May 2020

Appeal Ref: APP/H0520/X/19/3235615

Fenside Caravan Park, Puddock Road, Warboys PE28 2UA

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr F Adams against Huntingdonshire District Council.
 - The application (Ref.18/02721/CLPD) is dated 19 December 2018.
 - The application was made under section 192(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 the use of land as a touring caravan site for the siting of touring caravans including as a person's sole or main place of residence.
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Decision

1. The application is refused.

Application for costs

2. An application for costs was made by Mr F Adams against the Council. This application is the subject of a separate decision.

Procedural Matters

3. There is no description of development within the original application form. I have utilised above the description shown on the accompanying 'Planning Statement'. The full address is taken from the Appeal Form.
4. The appeal follows the Council's failure to determine the application within the prescribed period. The Council has indicated that if it had reached a decision it would have refused the application.
5. In an LDC application the planning merits are not relevant. My decision must be made solely on the application of the law and relevant judicial authorities.
6. The approach to be taken is set out in the 'Lawful development certificates' section of the national Planning Practice Guidance ('PPG'). It states a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. In determining an application for a prospective development under section 192 a local planning authority needs to ask: "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

7. The appellant confirms that there is currently some occupation of touring caravans on the site, but not as a sole or main place of residence. The Parish Council maintains that the appeal site "still contains caravans contrary to the existing permission". However, the matter before me is not whether there is an existing breach of planning control, but whether the proposed use would be lawful. The proposal is to use the whole site as a touring caravan site including occupation as a sole or main residence.

Reasons

Main Issue

8. The main issue is, if the Council had refused the application, whether its refusal would have been well-founded.

Background

9. In a decision dated 10 March 1999, planning permission was granted on appeal¹ on application No. 98/1104 for "the proposed change of use to camping and touring caravan site at land at Puddock Hill, Warboys". The grant of permission was subject to seven conditions. Condition 4 said that "no more than sixteen caravans shall be stood on the site." By condition 6 the use of those caravans was restricted "for holiday purposes only" except for the one occupied by the site manager and the caravans are not permitted to remain on the site for more than fourteen days in any calendar month. Condition 7 stated that "no caravan, including the one occupied by the manager, shall remain on the site between 1 October in any one year and 31 March in the succeeding year."
10. Condition 7 was subsequently varied by a decision dated 18 November 1999 "to allow stationing of touring caravans between 1st March & 31st October at O.S. 2568 & 3073 Puddock Hill, Warboys". A corresponding condition was imposed to restrict caravans between 31 October and the following 1 March. The decision stipulated (as a second condition) that all other conditions specified in permission 98/1104 continue to apply. This decision will have operated as a new and separate permission.
11. The Council then granted planning permission on 7 April 2004 described as the "Renewal of permission 9801104 for use of land as touring caravan site", subject to eight conditions. Among those conditions was a repeat of conditions 4 and 6 on the 1999 decision (as conditions 5 and 7) which included a restriction on use for holiday purposes only. Condition 8 stated that "No caravan, including the one occupied by the manager, shall remain on the site between 1st October in any one year and 31st March in the succeeding year", being a repeat of the previously varied condition 7.
12. Again, rather than a 'renewal' this will have been a new permission subject to conditions. I am informed that in May 2013 the Council issued correspondence relating to the discharge of conditions, although copies are not supplied. It therefore appears likely that the 2004 permission was implemented.
13. There followed on 16 November 2016 the issue by the Council of a LDC for existing use "as touring caravan site". The accompanying plan corresponds with the current appeal site. There are two notes endorsed on the LDC. The first records that "*The applicants have provided adequate evidence to satisfy the*

¹ Appeal ref: T/APP/H0520/A/98/1014145/P5

Local Planning Authority that, on the balance of probability, the claimed use of the site for a caravan site has been implemented, and confirmed by the LPA in the letter dated May 2014. Therefore consent should be issued for the use as it is immune from enforcement action and as such is lawful." The second note reminds the applicant "of the restriction of the [sic] how many caravan [sic] are allowed to be pitched at the site at any one time, and the length of time the caravans can be positioned at the site, i.e. condition 4-7 of the planning decision notice from the Planning Inspectorate." On the reverse of the LDC the notes confirm that the LDC was issued solely for the purposes of section 191 of the 1990 Act and sets out the effect of the LDC.

Analysis

14. In order for an LDC to be granted under section 192, the onus is firmly on the appellant to show that the proposal would be lawful if instituted or begun at the time of the application.
15. It is the appellant's case that the 2016 LDC does not contain conditions or limitations on the use of the land and so the use for touring caravans can be for any period, any number and any type of occupation. To support this stance, the judgment in *Broxbourne BC v SSE (1978)* is cited which established the principle that one must not seek to go behind a certificate of established use.
16. More recently, the High Court in *Breckland DC v SSHLG & Plumtree Country Park*² held that the Inspector was entitled to find an LDC for the 'use of land as a camping and caravan site...' was unambiguous. In applying *Broxbourne*, the Court warned that "extreme caution" should be exercised in allowing extrinsic material to be used for interpretative purposes.
17. These were not cases where a LDC followed the grant of planning permission to confirm the lawfulness of the same development which was previously approved. The cases are relevant to the extent that the Council contests whether a 'touring caravan site' can be used for the purposes applied for. As the term denotes the type of caravan that can be placed on the site, it does not by definition preclude the use as a person's sole or main place of residence. There is no reason why a touring caravan could not as a matter of principle be occupied as a sole or main residence, but the matter does not end there.
18. Clearly, the 2016 LDC was not a 'consent' operating as a planning permission. By virtue of section 195 it could only certify the existing use which was considered to be lawful. The lawfulness of the use of the appeal site as a touring caravan site is conclusively presumed from the 2016 LDC (section 191(6)). The real crux of the issue is whether in issuing the LDC, the Council inadvertently certified the lawfulness of the site as a touring caravan site free from any conditions and restrictions.
19. An LDC cannot be subject to conditions, but it can specify the precise level or scale of use. *R v Thanet DC ex parte Tapp & Anr*³ concerned the limits on a local planning authority in granting a LDC for a proposed use expressed in very generalised terms. Unlike section 191(4), which is applicable to existing uses, there is no equivalent power under section 192 to allow the modification of the description. The decision acknowledges that precision is equally desirable under both provisions. The High Court gave as one example a proposed use for a

² [2020] EWHC 292 (Admin)

³ [2000] EWHC, [2001] EWCA Civ 5592

caravan site and suggested that if the authority was concerned that to issue a certificate in such terms might open the door to unfettered intensification, it could ask the applicant to provide a more precise description of the proposed use e.g. caravan site for 12 touring caravans. The appellant uses this to illustrate how the First Schedule of the 2016 LDC could have been expressed more specifically with reference to numbers and use, but it did not do so.

20. That scenario is not on a par with this appeal where planning permission had already been implemented. There was no risk of allowing unfettered intensification because the 2016 LDC does no more than confirm that the use which was granted permission was lawful on the application date.
21. The appellant further draws my attention to an Appeal Decision⁴ for Presthope Caravan Park where a LDC was granted for the proposed siting of static caravans throughout the year for the purposes of human habitation. That was in circumstances where a LDC of existing use had already been issued by the Council for unrestricted use as a caravan site which had become immune from enforcement action due to the passage of time. In those circumstances there was no possibility of there being conditions on use. That differs from this case where express planning permission had been granted.
22. Section 193(5) provides that a certificate under section 191 or 192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate. This means the LDC procedure cannot be used to circumvent conditions imposed on an existing permission, unless the permission itself is invalid.
23. This provision is reflected in the PPG. Under the heading of "*How does a lawful development certificate relate to conditions on an existing planning permission?*" it states "*A lawful development certificate may be granted on the basis that there is an extant planning permission for the development; however, that development still needs to comply with any conditions or limitations imposed on the development by that grant of permission, except to the extent specifically described in the lawful development certificate.*"
24. Having consulted the parties on the possible application of section 193(5) in this case the appellant also drew my attention to the now withdrawn Circular 10/97, Annex A as a historic reference to section 193(5). Aside from addressing the same provision now within the PGG, it explained that if there is an extant planning permission which is subject to a number of conditions, an LDC granted in respect of one of them could not be regarded as legitimising breaches of any of the others. However, that is not the scenario arising here.
25. Section 193(5) is not simply a mechanism to clarify that a specific certificate identifying a breach of one condition does not suggest immunity to other conditions, as the appellant claims. It clearly encompasses a situation where a LDC is issued for development implemented under a planning permission which is subject to conditions and where no breach of condition has occurred.
26. In my view this case falls squarely within section 193(5). There is no breach of any condition described in the 2016 LDC and the conditions previously imposed on an extant permission would continue to apply. Those conditions would still

⁴ Appeal ref: APP/L3245/X/16/3150793 dated 18 November 2016

bite regardless of whether they were referenced in the certificate. As it is, the note added to the certificate alerts the reader to the presence of planning conditions restricting the use albeit the details are incomplete and other permissions had been issued. The appellant asserts that the 'relevant' permission was from 2013. This appears to be in error as I have not been made aware of a permission from that year. Regardless of date, the evidence indicates there was an extant permission with conditions on occupation.

27. Caselaw makes clear that it is not possible to import significant limitations into a historic LDC, but that does not override the operation of section 193(5). An existing planning permission under which the appeal site has operated cannot simply be ignored or disregarded on the basis that an informative note was unclear as to which specific permission applied.
28. All that the 2016 LDC confirms is the lawfulness of the use as a touring caravan site. It was lawful because planning permission had been implemented for such use. That is plain from the reasons for issuing the LDC (which explicitly say the use was 'implemented') without looking behind the LDC. The certified use is precisely that for which planning permission was granted. It does not certify a use in breach of condition. The question was not asked whether it had been lawful to use the site as a touring caravan site in breach of planning permission. Thus, this is not a case where a LDC has been issued for breach of the conditions restricting its use or a different use from that already approved. The 2016 LDC does no more than establish, as a matter of fact, that the approved use remained lawful at the date of the application.
29. The appellant acknowledges that where a LDC confirms a particular permission is extant, it would not be necessary to list all the conditions that would be enforceable as the LDC would simply confirm an extant permission. That is effectively what has happened here.
30. On the date of the current application the proposed use would not have been lawful because the use as a touring caravan site could not have included use as a person's sole or main place of residence as it would have been in breach of condition. Whichever permission the use operates under, there is a condition confining the use to holiday purposes only. A condition also required the caravans to be removed for part of the year which is incompatible with a sole or main residence.
31. Therefore, a LDC cannot be issued for the proposed use because it would constitute a breach of condition on a subsisting planning permission.

Formal Decision

32. If the Council had refused the application their refusal would have been well-founded.

KR Seward

INSPECTOR