



Appeal Decision

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 June 2020

Appeal Ref: APP/A1720/X/19/3232849

Hamble Park, Fleet End Road, Warsash, Fareham SO31 9JU

- 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 Michael Williams against the decision of Fareham Borough Council.
 - The application Ref P/19/0024/LP, dated 11 January 2019, was refused by notice dated 21 March 2019.
 - 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 siting of two residential mobile homes.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the description of the use from the application form but have omitted terms which are not acts of development.
3. Due to travel restrictions currently in place as a result of the COVID-19 pandemic I have sought the parties views as to whether the appeals can be determined without the need for a site visit. I have received no objection to this approach and am satisfied that the appeal can be determined on the evidence before me.

Main issue

4. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded. This will turn on whether there is a planning condition which would prevent the stationing of 2 residential mobile homes within the area proposed.

Reasons

5. An application under S192(1)(a) of the Act¹ seeks to establish whether any proposed use of buildings or other land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law.

¹ Town and Country Planning Act 1990 (as amended)

6. The appeal relates to Hamble Park, a permanent residential mobile home park for retirement purposes. There are 76 mobile homes on the park arranged around a circular vehicular road. The application site is located within this circular road and comprises an open green area. The appellant is seeking to determine whether the stationing of 2 residential mobile homes within this area would be lawful.
7. Planning permission for the site was granted in 1979, reference FBC 4775/9 subject to a number of conditions. Condition 2 attached to the planning permission states, 'The use of the land as since hatched in blue on the approved plan shall cease by the 26th February 1982 and the land shall be reinstated to its former condition to the satisfaction of the LPA at or before that date'. Condition 9 states 'The land hatched blue on the approved plan shall remain undeveloped and be laid out and maintained to the satisfaction of the LPA as amenity land in relation to the remainder of the site to be developed.'
8. The Council refused the LDC application on the basis that it is not satisfied that the proposed use of the site would not result in a breach of planning condition 9 of FBC 4775/9 or that the proposed use would be immune from enforcement action. The appellant has drawn my attention to *Hall and Co Limited v Shoreham by Sea Urban District Council* and another [1964] 1 All ER 1 where it was held that conditions which were fundamental to the grant of planning permission and which were found to be unworkable and in conflict with the general law, and therefore invalid, resulted in the grant of such permission itself being void.
9. Both conditions 2 and 9 make reference to 'the land hatched blue'. Condition 11 makes reference to land hatched in red. The area referred to in Condition 9 is annotated and is therefore clearly identifiable. However, there are two distinct areas which are cross hatched within the plan. The plan is not available in colour and, with respect to condition 2, it is therefore unclear precisely which area/s the blue hatching may relate to. The appellant has questioned the validity of the 1979 permission and asserts that Condition 2 makes no sense and cannot be severed from the rest of the conditions on the permission. As a result, the whole permission is invalid and none of the conditions are enforceable.
10. From the evidence before me, I consider it very unlikely that the intention was to grant the use of the site as a caravan park on a temporary basis as the hatched areas comprise discrete areas which are clearly marked out on the plan. The granting of a temporary permission would also conflict with condition 1 which requires the development to begin within 5 years and condition 6, which requires the implementation of a landscaping scheme within 2 years and its subsequent maintenance for 10 years.
11. It is not clear what use condition 2 seeks to ensure ceases. Nevertheless, the fundamental aim of both condition 2 and condition 9 is to ensure that the land hatched blue on the approved plan is not developed. In this respect, I do not consider that the conditions conflict. Even if I were to conclude that condition 2 is not valid, this would not make the whole planning permission invalid since it does not appear to be fundamental to the grant of planning permission.
12. Planning permission was also granted in 1988 for the positioning of a site office partially within the area of amenity space shown on the approved plan, reference FBC 4775/16. The appellant asserts that the grant of planning

permission for an office on part of amenity land means that condition 9 can no longer be complied with.

13. Whilst I would agree that is the case in respect of the office, I am not persuaded that this removes the need for compliance with the condition elsewhere within the site. The appellant asserts that the fact that the amenity land is not divisible distinguishes it from *St Anselm Development Co Limited v First Secretary of State* [2003]. However, the office occupies a part of the amenity area which is distinct from the remainder of the area.
14. The appellant has drawn my attention to a decision at Temple Grove, Essex and an appeal decision APP/Q9495/X/08/2069962. In both cases cited, it was concluded that the addition of mobile homes at existing parks would not represent an intensification in use sufficient to be a material change of use. It is not disputed that the proposal would not amount to a material change of use. The stationing of 2 residential mobile homes on the area of open space and would result in a net additional one mobile home (one would be lost as a result of the creation of an access road). I agree that the proposal would not result in a material change of use.
15. Condition 9 attached to planning permission FBC 4775/9 restricts the use of the amenity area and is, in my view, sufficient to impose a limitation in law. From the evidence before me, on the balance of probabilities, I conclude that the use of the land for the siting of two residential mobile homes would not be lawful.

Other Matters

16. Concern has been raised by interested parties regarding the effect of the proposal on privacy and loss of recreational area. However, I am unable to consider planning merits.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the siting of two residential mobile homes was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Savage

INSPECTOR