



Appeal Decision

Site visit made on 20 June 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Appeal Ref: APP/M9496/X/20/3247079

Ashbourne Heights Holiday Park, Ashbourne Road, Fenny Bentley DE6 1LE

- 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 Simon Williams of Bridge Leisure Parks Ltd against the decision of Peak District National Park Authority.
 - The application Ref NP/DDD/0819/0904, dated 15 August 2019, was refused by notice dated 13 December 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 short-stay touring caravans, camper vans and tented camping at Plot 10 without any seasonal occupation restriction.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Although the application form states that the proposed use relates to Plot 10, the land shown edged in red on the site location plan is the entire caravan and camping site known as Ashbourne Heights. There is no substantive evidence that Plot 10 is a separate planning unit. The Council determined the application on the basis that the whole caravan and camping site is the relevant planning unit against which to determine the proposed use and I have considered the appeal on the same basis.

Background

3. The appeal site has an extensive planning history, including various planning permissions and Lawful Development Certificates (LDC). Plot 10 was historically in agricultural use, with occasional use for Duke of Edinburgh Award Scheme and other tented camping. Over time, the Plot became an overflow area for short-stay camping and touring caravan/camper van, pitches during the peak holiday weeks in the summer. On 13 December 2016 a LDC was issued for the use of the site on a seasonal basis from 1st March to 31st October, except for three specific areas which operate on an extended season of 1 March to 16 January, as allowed by conditions attached to planning permissions.

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 the proposed use of Plot 10 for the siting of short-stay touring caravans, camper

vans and tented camping, without any seasonal occupation restriction, would be a definable change in the character of the existing lawful use, resulting in a material change of use of the application site.

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. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
6. Ashborne Heights is a substantial holiday park in a generally rural area within an undulating landscape. Plot 10 (the 'Plot') is located on the edge of the park, overlooked by higher ground which is bisected by the Limestone Way. The Plot itself comprises a substantial open field bound by mature vegetation. Access to the Plot is gained via the main entrance to the park, which itself is accessed via the A515.
7. Due to Covid-19 the park was closed to visitors at the time of my visit. As such, there was very limited activity within the site. Caravans were stored at a number of other plots across the site, as would be allowed over the winter period. Occupancy restrictions vary across the site, however, it is evident that there would be features present within the site which would be present all year round which would mean that the overall site is discernible as a holiday park throughout the year.
8. An LDC may establish that a use has become lawful through the passage of time. It is not a planning permission and cannot be subject to conditions, but it can specify the precise level or scale of use, providing a point of reference against which the materiality of any subsequent change can be measured.
9. The First Schedule of the 2016 LDC, sub-section (1) describes the use of the Land as a holiday caravan and camping site, but where relevant, as further described below [sic]. Sub-section (3) describes the use as seasonal, with the season being from 1 March to 31 October in any year (other than in certain identified areas). A number of other plots have different seasonal periods by virtue of conditions attached to planning consents. Nevertheless, there will be a period each year, between 16 January and 1 March when there is very little activity across the site.
10. S55 of the Act defines development as the making of any material change in the use of any buildings or other land, or the carrying out of building, engineering, mining or other operations in, on, over or under land. The appellant asserts that there would be no material change of use resulting from intensification of use of the wider Appeal Site and has drawn my attention to

¹ Town and Country Planning Act 1990 (as amended)

case law² in this regard. The proposal would not result in an increase in scale, rather it would enable use of the site all year round. It is evident from the Hertfordshire case that it is possible for land to be used for the same generic description, e.g. a scrapyard, but the way in which it is used can amount to a material change of use.

11. The appellant has also drawn my attention to Wyre Forest BC v SSE & Allen's Caravans [1990] 2 WLR 517. It is not disputed that Plot 10 forms part of the wider planning unit, for use as a holiday caravan and camping site. The appellant asserts that the use of the site with no occupational restriction would not change the character of the use or have material effects on neighbouring uses and the locality taking into account the established caravan park use of the site, landscaping and traffic impact.
12. The LDC explains the characteristics of the site and defines the use of Plot 10 as seasonal, between 1 March to 31 October in any year, and for the siting of short-stay touring caravans, camper vans and tented camping. It is a matter of fact and degree as to whether the character or characteristics of the proposed use would amount to a material change of use from the holiday caravan and camping site use identified in the 2016 LDC. The proposed change to the siting of short-stay touring caravans, camper vans and tented camping at Plot 10 without any seasonal occupation restriction has to be judged in the context of the caravan site at Ashbourne Heights as a whole.
13. The implication of the LDC is that for four months, a third of the year, Plot 10 is free of tents, caravans and any associated paraphernalia, at a time when the Plot would be more visible outside of the site because deciduous trees would not be in leaf. Although caravans are stored elsewhere in the site during the winter months, because of its location on the edge of the Park, tents and caravans located in Plot 10 would be likely to be visible outside of the site from higher ground. The remainder of the site, by contrast, is less visible outside the site from higher ground due to topography and extensive vegetation. Whilst Plot 10 comprises a modest proportion of the overall area covered by the park, the effect of the proposal would therefore have a materially greater effect on the character and appearance of the area compared with the existing use.
14. Occupation of Plot 10 during the winter months would generate vehicle movements which are not currently generated. Whilst it is likely that use during the period would be less intensive than between 1st March and 31st October as it would be the low season, I have no substantive evidence that such movements would be insignificant. Movements to the park outside the season³ would mostly be generated by occupants of Plots 1, 2 and 3, which have an extended season of 1 March to 16 January in each following year. Given the substantial size of Plot 10, I consider it likely that the number of movements that would be generated over that period would be materially different to those currently generated during the winter months across the site, particularly since between 16 January and 1 March occupancy of the wider site is restricted.
15. The appellant has drawn my attention to appeal decision APP/J3720/X/15/3003762. The decision concerned a site which had planning

² Hertfordshire CC v SSCLG & Metal and Waste Recycling [2012] EWCA Civ 1473, Reed v SSCLG and another [2014] EWCA Civ 241, John Childs v the First Secretary of State and Test Valley BC, as contained in JPL 2006, P1326 (referred to as the Childs case)

³ The season is 1 March to 31 October in any year

permission for the use of the land as a "seasonal caravan site for holiday use between the 1st March and the 31st October each year and one residential site for occupation by a warden". The Inspector considered the case of *I'm your Man v SSETR* [1999] 77 P&CR 251 and held that, since there were no conditions restricting the use permitted, the appeal should be allowed.

16. Whilst I have noted the findings of the Inspector, I do not have full details of the case before me. The appeal turned on whether a planning permission remained extant, as the Council agreed that the unrestricted use of the caravan site permitted by the permission would not comprise a material change of use. That is not the case here. As set out above, I have found that there would be a material difference between the use authorised by the LDC and the proposal before me based upon the character of the site and the characteristics of the proposed use. I am therefore not persuaded that the appeal is comparable to the appeal scheme before me.
17. I agree that, given the location of Plot 10 away from nearby residential properties, the proposal would be unlikely to give rise to off-site amenity impacts. However, for the reasons given above, I conclude that the proposal would be a definable change in the character of the existing lawful use, resulting in a material change of use of the application site. It is not necessary for me to consider whether there would be harm arising from the proposal since material change can include improvements as well as adverse change.
18. Accordingly, from the evidence before me, on the balance of probabilities, I conclude that the siting of short-stay touring caravans, campervans and tented camping at Plot 10 without any seasonal occupation restriction would not be lawful.

Conclusion

19. 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 short-stay touring caravans, campervans and tented camping, without any seasonal occupation restriction 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