



Appeal Decision

Site visit made on 7 July 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18TH AUGUST 2020

Appeal Ref: APP/A3010/X/20/3250846

**Hawthorns Mobile Home Park, Main Street, Dunham on Trent,
Nottinghamshire NG22 0UA**

- 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 William Buckland against the decision of Bassetlaw District Council.
 - The application Ref 19/01597/CTL, dated 11 December 2019, was refused by notice dated 11 February 2020.
 - The application was made under section 191(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 described in the application form as "Ancillary land used for recreation in connection with the Hawthorns Mobile Home Park".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The site address stated on the application form and the Council's decision notice, and on the appeal form, is Hawthorns Caravan Park. However, the description of the use in all 3 documents refers to Hawthorns Mobile Home Park and following a request for clarification I shall refer to the site as such.

Main Issue

3. The main issue is whether the Council's refusal to issue an LDC was well founded. This turns on whether the appellant can show, on the balance of probability, that the use as ancillary land used for recreation in connection with the mobile home park is lawful due to the passage of time. The evidence should show the use began on or before 11 December 2009, which is the relevant date, and has continued thereafter without significant interruption.

Reasons

4. The Planning Practice Guidance states "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the

applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

5. The site is adjacent to the mobile home park and accessed by a grassed track leading from the park. It has hedges on 2 boundaries and trees and bushes on the third boundary, alongside the A57. The site is grassed with a group of trees in the centre and a second group in the western corner.
6. The appellant's contention is twofold. First, and by reference to the judgement in the *Burdle* case¹ and considering the planning history and other evidence, that the appeal site and the mobile home park form a single planning unit. Second, that the appeal site has been used for purposes ancillary to the mobile home park for at least 10 years.
7. The application form states that the change of use occurred on 1 January 1994. Precise and unambiguous evidence of this, and that the claimed use has continued without significant interruption over any 10-year period since then, would be sufficient for a certificate of lawful use to be granted on the balance of probability.
8. The appellant states that the appeal site is shown on the approved drawings of planning permissions granted in July 1992², May 2005³ and April 2017⁴. He believes there was an earlier permission but has not been able to identify it. He also indicates that the appeal site formed part of the planning unit of the July 1992 permission and was for the recreational use of residents. It is also stated that an approved plan shows access to the land from the mobile home park by means of a gateway.
9. The May 2005 permission was for "siting of two extra mobile home units, relocate open space amenity area and construct new access". I understand the appeal site was within the red line of this permission, although it is not claimed that it was the existing or proposed relocated open space amenity area.
10. The first of the April 2017 permissions varied conditions of the July 1992 approval and the second removed a condition from the May 2005 permission. I understand the appeal site is within the red line of both applications and was certified in the same ownership as the mobile home park. The same information formed part of a further application⁵ that was withdrawn.
11. The appellant claims this evidence shows, in line with *Burdle*, that a single planning unit exists, comprising the main purpose of the mobile home park and ancillary recreational activity on the appeal site. However, copies of the decision notices and the plans and other documents associated with these applications have not been provided, which limits the weight I can afford to them. Nevertheless, as described, and on the balance of probability, the appeal site and the mobile home park have been in the same ownership since 1992.
12. However, the planning history related by the appellant does not confirm that any particular activity or use of the appeal site was recorded or proposed in any of the applications or permitted in response. Neither is the area covered by a planning permission necessarily determinative of the planning unit, although

¹ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

² 1/14/90/6

³ 14/05/0006

⁴ 17/00067/VOC and 17/00068/CONR

⁵ 18/01205

- it is a factor to be considered, if evidence is available. While I note the appellant's view about the 1992 permission, he confirms that the plans are only available in black and white reproduction. Accordingly, it is unclear whether the appeal site was edged red, and therefore part of the application site, or edged blue, and therefore in the same ownership but not part of the application site.
13. The application for the certificate included 6 letters, signed by 9 current or former residents of the mobile home park. Three of these identify a 10-year period necessary for a claimed use to be immune from enforcement action. In each case this corresponds to the writer's duration of residence at the mobile home park, either from 1992 (month unknown) to October 2019, from August 2006 to November 2017, or from December 2007 to October 2019.
 14. All 9 signatories state they used the appeal site for recreation, specifically walking or dog walking, during their period of residence but not how often. The letters also all state that while other people were observed using the appeal site for walking or dog walking, they were all residents of the mobile home park. None of the letters indicate how often the writer used the appeal site in this way, how many other people were observed doing so, or how frequently.
 15. Four of the 9 statements of truth submitted with the appeal cover a minimum 10-year period. These periods are either 1992 (month unknown) to March 2020, August 2006 to November 2017 (in 2 statements), or 2007 (month unknown) to March 2020. They clarify the claim, stating that the appeal site "has been used continuously and without interruption for recreational use by the residents of The Hawthorns Residential Home Park and for no other purpose." The nature of the recreational activities involved, how many people undertook them, and how frequently they did so are not stated.
 16. The statutory declarations made by the appellant and his wife on 1 April 2020 state that, since 1999, the appeal site "has been used freely and without interruption for recreational purposes by the residents of the Hawthorns Residential Home Park and for no other purpose." As declarations made in accordance with the Statutory Declarations Act 1835, this evidence should be afforded significant weight. However, there is no indication of what recreational activities were undertaken, or on what basis, their popularity or frequency.
 17. The appellant's statement refers to the appeal site being used for exercise and picnics but none of the letters and statements of truth and neither of the statutory declarations confirm either activity.
 18. A key issue in determining the appellant's claim regarding the planning unit is whether the mobile home park and the appeal site are physically and/or functionally separate. I saw a degree of physical separation, evident in the hedge separating the appeal site from the greenway running behind the adjacent mobile homes. I also saw that the grassed area of the appeal site appears to be cut to a different mowing regime from the greenway and the access from the mobile home park, probably by a gang mower.
 19. While my site visit only provides a snapshot of the use of the appeal site, I saw that there was no seating or play equipment and I could not discern any footpaths running around its perimeter. I saw no evidence of walking or dog walking, or of any other formal or informal recreational activity having taken place. Furthermore, the grass appeared more thinly sown and less frequently

- mowed than the nearby greenways and the mowing regime had left gouges in the ground. As a result, it did not appear attractive for recreational activity.
20. Any functional relationship between the mobile home park and recreational activity on the appeal site should be one that is normally found and not based on the personal choice of the person carrying out the activities. The proximity and ease of access to the appeal site may have made it attractive to some mobile home park residents for walking and dog walking. However, the evidence does not indicate that either activity has been commonplace. Furthermore, while the appellant's aerial photographs from September 2008 and July 2018 appear to show a path on the land, those taken in 2004, 2005 and twice in 2015 do not.
21. No evidence to support the claimed date that the use began, 1 January 1994, has been provided. While one resident's letter and statement of truth indicate that recreational activity had been undertaken and observed from 1992, it is possible that memories had faded with the passage of time. However, the appellant and his wife's statutory declarations, which should be afforded greater weight, do not provide evidence of a use prior to their acquisition of the mobile home park in 1999. No explanation for these differences has been provided and a date on which the change of use occurred has not been satisfactorily demonstrated. Furthermore, the evidence does not indicate that the only stated recreational activity of walking, with or without dogs, enough to form a path has been continuous.
22. Significantly, no evidence has been presented of the landowner granting any consent for recreational use, for example in marketing the mobile home park or in tenancies or sales documents. Such evidence would indicate that recreational activity on the land had been consciously facilitated, suggesting a functional connection between it and residency at the mobile home park.
23. The evidence of the appeal site and the mobile home park being in the same ownership since 1992, or at least since the current owners acquired both in 1999, is enough to demonstrate a single unit of occupation. However, the appeal site and the mobile home park form distinct and separate areas and it has not been demonstrated that any recreational use of the appeal site, even if it were only undertaken by residents of the mobile home park, has been ancillary to the mobile home park for a period of 10 years.
24. While the previous use of the appeal site has not been stated, I consider it most likely that it was either in no use or agricultural. The evidence does not show that the character of the land has altered as a result of the stated activities. Taken overall, the evidence provided by the appellant is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, when the claimed recreational use began and that it had thereafter taken place continuously without significant interruption.

Conclusion

25. For all the above reasons, I conclude that the Council's refusal to issue an LDC was well founded. The appeal fails accordingly.

Mark Harbottle

INSPECTOR