The Planning Inspectorate

Appeal Decision

Site visit made on 7 September 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2020

Appeal Ref: APP/F2360/X/20/3254047
Penwortham Park, Stricklands Lane, Penwortham PR1 9YD

- 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 John Preston on behalf of Wyldecrest Parks Management Limited against the decision of South Ribble Borough Council.
- The application Ref 07/2020/00283/CLU, dated 18 March 2020, was refused by notice dated 13 May 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 a residential caravan site.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is well-founded.

Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use subject of the application is lawful for the purposes of section 191 of the 1990 Act. A use is lawful under the provisions of section 191(2)(a) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired.

4. The appeal site is roughly triangular in shape with static residential caravans, access roads, etc in the centre. On the perimeter of the site are three wooded embankments. There is no dispute over the central part of the site being authorised as a caravan site. Indeed, planning permission was granted for a caravan site in the early 1960's, although the details of what was permitted are not before me.

5. The site is the subject of an extensive planning history. Most notable is the planning permission granted on appeal on 24 June 1982 for the change of use

of railway embankment to caravan park amenity area[1]. The appeal was with regard to the north east and north west embankments. The description of the development in the appeal decision does not specifically state that the open space was used in conjunction with the caravan site. However, in paragraph 4 the Inspector states "…it seems to me that the main issues in Appeal A are whether the 2 disused railway embankments form suitable amenity areas for the Mobile Home Park." Therefore, it is clear that the Inspector considered the appeal on the basis that the two embankments were used as amenity areas in conjunction with the caravan site. This also corresponds with the description provided by the Council in their evidence.

6. The Council argue that because the appeal decision was made in excess of 10 years ago it should not be relied upon in the consideration of the s191 application. However, the decision is vitally important. There is no dispute that the permission was implemented. Indeed, the Inspector noted that the use had already taken place. Therefore, the starting point in the determination of the subject appeal is that the north east and north west embankments were lawfully used as amenity areas for the caravan site following the granting of planning permission in 1982. There is no evidence before me that these two embankments have been used for any other purposes since 1982 or that their lawful use as amenity areas for the caravan park has been abandoned. The crux of the matter is whether these two embankments fall within the same planning unit as the central part of the caravan site; and, whether the southern embankment is also lawfully used as an amenity area for the caravan site and falls within the same planning unit.

7. The appellant makes reference to the case of *Burdle v Secretary of State for the Environment [1972] 3 AER 240, 244* in which Bridge J suggested three broad tests for determining the appropriate planning unit: 1) a single planning unit where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary; 2) a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes. In such a case, each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.

8. The appellant contends that the site falls within the first *Burdle* test, relying on the section 1(4) of the Caravan Sites and Control of Development Act 1960, which states that a ""caravan site" means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed." It is reasonable to conclude that this could include car parks, open land and recreational areas.

9. As there is no evidence before me that the lawful use of the north east and north west embankments as amenity areas for the caravan site has changed or been abandoned, it is reasonable to conclude that their use as amenity areas, as permitted, is incidental to the overall caravan site. Whilst the naturally wooded embankments are to some extent physically separate and distinct from the developed central caravan site area, their use as amenity areas for the caravan site creates a functional link between the two, with the primary use of

[1] Appeal Ref:T/APP/5297/A/81/15544/G8

the overall site being a residential caravan site to which the embankments are used incidentally as amenity areas. Therefore, the north east and north west embankments fall within the same planning unit as the central part of the caravan site, satisfying the first *Burdle* test.

10. I now turn to the southern embankment. At the time of the 1982 planning permission being granted, this embankment was not in the same ownership as the other two embankments and the central caravan site and did not form part of the planning permission. Accordingly, it does not benefit from the same starting point as the other two embankments in that they already have planning permission for use as amenity areas for the caravan site.

11. A statutory declaration from the resident of 20 Park View, which backs onto the southern embankment confirms that their garden was extended into part of the embankment in excess of 10 years ago. The Council accept this and consider that this area of the embankment could be considered as part of the overall caravan site.

12. A statutory declaration submitted by the resident of 18 Park View similarly states that his garden has also been extended into the embankment. However, as he confirms that he has only resided at the property since 2015, this does not cover the requisite 10-year period. Therefore, on the balance of probabilities, it has not been sufficiently demonstrated that the garden of 18 Park View was extended more than 10 years prior to the date of the application.

13. There is no other evidence before me to sufficiently demonstrate that, on the balance of probabilities, the southern boundary has been used as an amenity area incidental to the overall caravan site. Unlike the other two embankments, there are only a few caravans that back onto it. Therefore, even if there was some use of the embankment as alleged over the years, it would unlikely be to the same degree as the other two embankments, certainly not to the extent that it has resulted in a material change in its use to an amenity area incidental to the caravan site.

14. Whilst the southern embankment clearly has physical similarities to the other two embankments they are in different uses, which are clearly separate and distinct from each other. Accordingly, the southern boundary is a separate planning unit to that of the caravan site, which includes the north east and north west embankments.

15. I find therefore that, on the balance of probabilities, the north east and north west embankments have been used as amenity areas incidental to the residential caravan site, which fall within the same planning unit. However, the evidence in support of the appeal fails to demonstrate that, on the balance of probabilities, the material change of use of the southern embankment to amenity area incidental to the residential caravan site has occurred continuously for a ten-year period prior to the date of the application, with the exception of the garden extension at 20 Park View.

Other Matters

16. I have had regard to the comments received from local residents. However, the planning merits of the existing development are not relevant, and therefore not an issue for me to consider in the context of an appeal under section 195 of

the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Conclusion

17. S193(4) of the Town and Country Planning Act 1990 (as amended) states "A certificate under either of those sections may be issued— (a) for the whole or part of the land specified in the application." Therefore, it is within my power to issue a certificate for part of the land specified in the application.

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that, in respect of the north east and north west embankments and the garden of 20 Park View, the appeal should succeed. The appeal fails in respect of the remainder of the southern boundary. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Alexander Walker

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 March 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated on the balance of probabilities that the north east and north west embankments and the central caravan site area had been in continuous use as a residential caravan site for a period of 10 years ending with the date of the application and had thereby become immune from enforcement action.

Signed

Alexander Walker
Inspector

Date 20 October 2020
Reference: APP/F2360/X/20/3254047

First Schedule
A residential caravan site.

Second Schedule

Land at Penwortham Park, Stricklands Lane, Penwortham PR1 9YD.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

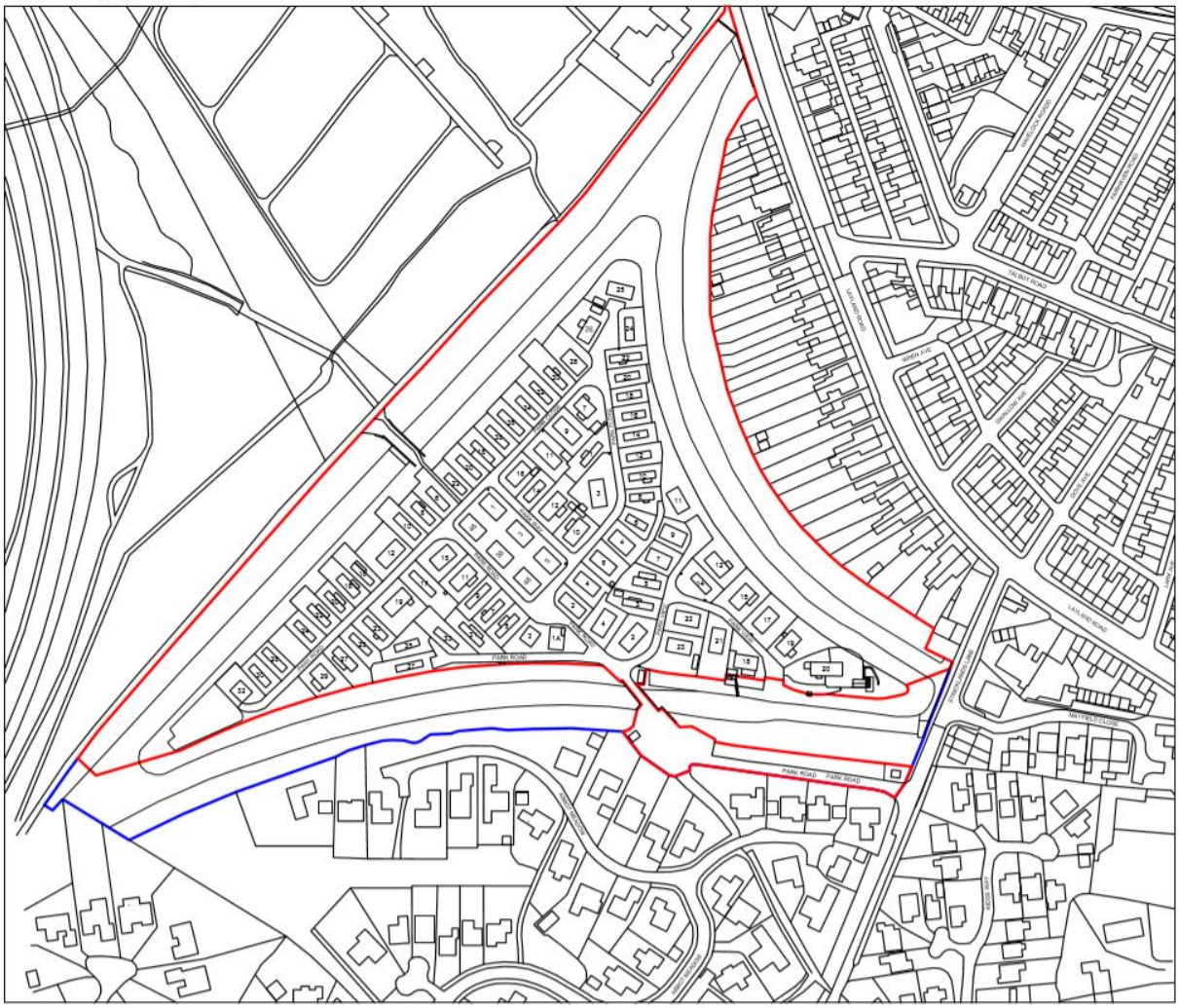
The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated:

by Alexander Walker MPlan MRTPI

Land at: Penwortham Park, Stricklands Lane, Penwortham PR1 9YD

Reference: APP/F2360/X/20/3254047

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