
Appeal Decision

Site visit made on 1 December 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

Appeal Ref: APP/A0665/X/20/3259215

Orchard Park, Orchard Park Lane, Elton CH2 4NT

- 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 (Wyldecrest Parks Management Limited) against the decision of Cheshire West and Chester Council.
 - The application Ref 20/01192/LDC, dated 30 March 2020, was refused by notice dated 5 June 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of new fencing and the alteration of existing fencing on the boundary of a caravan site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner heading above is taken from the appellant's planning statement submitted with the original application, as no description was given on the application form. I have noted the wording the Council used in their decision notice however, under section 192 of the Act there is no implied power to modify the description of the proposed development and there is no evidence which suggests that such wording was agreed by the appellant.
3. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
4. As the appellant pointed out, the planning merits of the proposed development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law.
5. I observed and the appellant confirmed in their statement that the development has been carried out.

Application for costs

6. An application for costs was made by Wyldecrest Parks (Management) Ltd against Cheshire West and Chester Council. This application is the subject of a separate Decision.

Main Issue

7. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

8. The proposal relates to the erection of fencing on the boundary of an established caravan site.
9. On the basis of the submitted plans and details it is evident that the application sought to demonstrate that the fencing is development permitted by Schedule 2 Part 5 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) which grants permission for development required by the conditions of a site licence for the time being in force under the 1960 Act.
10. The site license, for the caravan site, at paragraph 2.1 states that *the boundaries of the site from any adjoining land shall be clearly marked by a man made or natural feature and be maintained*. There appears to be no dispute between the parties that the proposed fencing is located on the boundary of the site.
11. The Council, argues that the fencing would not constitute permitted development as it would not comply with Schedule 2 Part 2 Class A of the GPDO which grants permission for the erection of a gate, fence, wall, or other means of enclosure, subject to certain conditions and limitations.
12. Consequently, the dispute between the parties relates to the interpretation of the GPDO, with the appellant essentially contending that each part of the GPDO is a self-contained entity and development permitted by one part is not annulled by the provisions of another. A point with which I do not disagree and in some cases, I acknowledge it is possible to carry out similar development under different parts.
13. Furthermore, there is no suggestion that a development permitted under one part, can be subject to conditions and limitations from any part to suit an argument or purpose.
14. However, in this case, whilst I acknowledge the permitted development rights which exist under Part 5 Class B of the GPDO, the site license requires a man-made or natural feature, it does not *require* [my emphasis] the construction of a fence, or that the boundary treatment is of a particular height.
15. The licence could be complied with by planting a hedge, which is not an act of development. Accordingly, the effect of the licence is not that planning permission is granted for any boundary treatment which does amount to development.
16. The act of development proposed is the erection of fencing, a development for which permission is granted by virtue of Part 2 Class A of the GPDO.

Consequently, whether the license ought to have been more precise, I consider that Part 2 Class A is relevant to the proposal.

17. Conversely, if the site license required a fence of a specific height to be erected, I consider that it would be unreasonable to suggest that Part 2 Class A would be relevant however, that is not the case.
18. The appellant, in support of their argument, referred to Part 19 Class R and Part 11 Class A, which concern the erection of fences and other such means of enclosure and screening. However, both parts relate to specific and discrete acts of development subject to conditions and limitations, unlike the terms of the site license.
19. In respect of Part 1 of the GPDO, also referred to by the appellant, it is recognised in the Government's Technical Guidance¹, that a development can fall within more than one class but in order to be permitted development it must meet all the limitations and conditions under each class relevant to the proposal. So, it is essential that any proposed household development is considered in the context of the permitted development rules as a whole in order to determine whether it benefits from permitted development rights.
20. The burden of proof rests with the appellant and whilst I have had regard to caselaw referred to in respect of the need for conditions where limits are to be imposed, the appellant has provided me with insufficient authority to determine that, on the balance of probabilities, the provisions of Part 2 Class A of the GPDO are not relevant.
21. The fencing exceeds 2m in height and the proposed development would not, therefore, constitute permitted development by virtue of Schedule 2 Part 2 Class A of the GPDO.

Conclusion

22. 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 erection of new fencing and the alteration of existing fencing on the boundary of a caravan site' 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.

Felicity Thompson

INSPECTOR

¹ Permitted development rights for householders Technical Guidance Ministry of Housing, Communities and Local Government September 2019