



Appeal Decision

Site visit made on 1 December 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th December 2020

Appeal Ref: APP/N2739/X/20/3256997

Whitecote Lodge, Ryther Road, Ulleskelf, Tadcaster LS24 9DY

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Matthew Stephenson, Whitecotes Park Ltd, against Selby District Council.
 - The application (Ref. 2019/1290/_CPP) is dated 5 December 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is permanent siting of static caravans for residential or holiday use.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the use which is found to have been lawful on the date that the application was validly made.

Application for costs

2. An application for costs made by Mr Matthew Stephenson, Whitecotes Park Ltd, against Selby District Council is the subject of a separate decision.

The application

3. While the application was made under section 192 of the Act, relating to a proposed use, I saw that the use had, as a matter of fact, commenced through the siting of a static caravan. The parties have not been able to tell me when this static caravan was brought onto the land, but the appellant's response to my query indicates that it was in place when the application was made, albeit repositioned within the site since. Accordingly, I shall consider the appeal under section 191 of the Act, as a current use of the land.

Main Issue

4. Had the Council determined the application, it would have refused to issue an LDC and the main issue is whether that would have been a well-founded decision. This turns on whether the appellant can show, on the balance of probability, that no enforcement action could be taken in respect of the permanent siting of static caravans for residential or holiday use on the application date.

Reasons

5. The appeal site is within the southern part of Whitecotes Caravan Park (the Park). The earliest planning permissions for the Park were restricted to the northern part and the use of the southern part as a caravan site was first permitted in 1989 (the 1989 permission)¹. Condition 8 of that permission stated "No caravan shall remain on site for a period exceeding 3 weeks in any 2 month period and no caravan shall be stationed on site during the month of February in any year". It therefore effectively prevented caravans from being permanently sited anywhere in the Park.
6. It is agreed that the 1989 permission was implemented. The main issues in dispute are whether that permission is still in effect or whether a subsequent permission (the 2010 permission)² was implemented and has superseded it.
7. Case law³ confirms that implementing planning permission does not prevent it later being argued that the planning permission was unnecessary because of existing use rights. Accordingly, and as the 2010 permission did not relate to development that would have resulted in the creation of a new planning unit, its implementation would not have prevented reliance on pre-existing use rights. In this case, the existing rights in question must have included those conferred by the 1989 permission.
8. The grant of an LDC in 2004 (the 2004 LDC)⁴ recognised that enforcement action could not be taken against the breach of condition 8 of the 1989 permission then occurring. The use permitted in 1989, and the restriction made by condition 8, applied to the entire Park. As the siting of caravans is a use of land rather than operational development, the non-compliance with condition 8 certified as lawful must also have applied to the Park as a whole. So long as condition 8 cannot be enforced, the 1989 permission allows any form of caravan, including a caravan occupied by the site warden, to be sited anywhere within the Park, including within the appeal site, for any length of time.
9. The use certified as lawful in the 2004 LDC is "a caravan site including the siting of four static caravans in the positions indicated on [the] plan and for the provision of pitches for touring caravans". This is more restrictive than the caravan site use permitted by the 1989 permission and it is not possible, in granting an LDC, to impose conditions. Accordingly, and while the wording of the 2004 LDC reflected information provided by the applicant, it could not change the broader description of development that had been approved in the 1989 permission.
10. While it is disputed whether the 2010 permission was implemented, there is no disagreement that the existing block plan, drawing 114/02, accurately represented what was on the ground on 5 March 2010, when the application was made. This shows a warden's static caravan within the then existing Park.
11. The 2010 permission included warden's accommodation but there is a contradiction between the description of development and the approved plans. The description states that the warden's caravan would be re-sited, but the drawings show that the warden would occupy a larger unit, which could not be

¹ 8/64/30D/PA, granted 17 February 1989

² 2010/0081/FUL (8/64/30G), granted 30 April 2010

³ Newbury DC v SSE [1980] 2 WLR 379, [1981] AC 578

⁴ 8/64/30F/PA, issued 2 July 2004

- the existing unit re-sited. Consequently, and in view of condition 02 requiring the development to be carried out in accordance with the approved plans, it is uncertain what would have constituted implementation of the 2010 permission.
12. An aerial image taken in 2013 shows a static caravan generally in the position of the proposed warden unit of the 2010 permission, although there is some variation in siting from approved drawing 114/03. While the aerial image lacks focus, it is clear enough to confirm that this static caravan was significantly shorter than the 18.3m length stated on drawing 114/03, which is listed in condition 02. For these reasons, and on the balance of probability, the static caravan did not constitute implementation of that permission in accordance with the approved plans.
 13. The inherent contradiction within the 2010 permission and the clear difference between the proposed warden's unit and what was subsequently brought onto the land are inescapable. Accordingly, and on the balance of probability, the permission was not lawfully implemented, and it matters not whether it would have superseded the 1989 permission.
 14. The Council's Environmental Health Officer (EHO) observed 2 static caravans on the southern part of the Park in 2014. As described, and although no details of siting are provided, one of these appears to be the static caravan in the 2013 aerial image, which is within the appeal site. The other static caravan is the one described as the existing warden's caravan on drawing 114/03. While the EHO reported that the site owner said this "was for a holiday let", which would be consistent with the 2010 permission, no evidence that any holiday letting took place has been presented.
 15. An LDC granted in 2019 (the 2019 LDC)⁵ confirmed that the use of the northern part of the site for the permanent siting of static caravans for residential or holiday use would have been lawful. In the Council's reasons for issuing this LDC, it confirmed that the 1989 permission was extant, except that condition 8 could not be enforced. While only the northern part of the Park was included in the LDC application, that does not allow any inference to be drawn about the lawful status of the southern part at that time.
 16. No evidence has been submitted of any period when the Park was not in use contrary to condition 8 of the 1989 permission since the 2004 LDC was issued. Evidence that the breach of condition 8 continued may be seen in the existing warden's accommodation shown on drawings submitted in 2010, in the static caravan in the 2013 aerial image, which the appellant states he moved to its current position in April 2020, and in the 2019 LDC.
 17. Each iteration of the warden's accommodation is sited such that, if it had been a replacement, it would have facilitated continuous residence. In addition, the Council confirms breaches of condition 8 observed by the EHO in 2014 and recorded in the Park's site licence, which included 7 static caravans and one residential caravan in 2017 and 2019. Accordingly, and on the balance of probability, the breach of condition 8 of the 1989 permission, recognised through the issue of the 2004 LDC, has continued since without interruption.
 18. The circumstances that had applied to the land when the 2004 LDC was issued continued to apply when the application was made, and the 1989 permission

⁵ 2019/0198/CPP, issued 2 October 2019

was in effect and had not been superseded by the 2010 permission. Owing to the continued permanent siting of static caravans at the Park, enforcement action could not be taken against the ongoing breach of condition 8.

Accordingly, and on the balance of probability, the land has been used for the permanent siting of static caravans for residential or holiday use for a period exceeding 10 years.

Conclusion

19. For these reasons I conclude, on the evidence now available, that a refusal to grant a certificate of lawful use or development in respect of the permanent siting of static caravans for residential or holiday use would not have been well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Mark Harbottle

INSPECTOR



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 5 December 2019 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:

The land had been used for the permanent siting of static caravans for residential or holiday use for a period exceeding 10 years preceding the date the application was validly made.

The use does not contravene the requirements of any enforcement notice in force and no enforcement action may be taken in respect of any breach of a planning condition it may constitute.

Signed

Mark Harbottle

Inspector

Date: 24th December 2020

Reference: APP/N2739/X/20/3256997

First Schedule

Permanent siting of static caravans for residential or holiday use

Second Schedule

Land at Whitecote Lodge, Ryther Road, Ulleskelf, Tadcaster LS24 9DY

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.



Plan

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

by Mark Harbottle BSc MRTPI

Land at: Whitecote Lodge, Ryther Road, Ulleskelf, Tadcaster LS24 9DY

Reference: APP/N2739/X/20/3256997

Not to Scale



0m 10m 20m 30m

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