



Appeal Decision

Site visit made on 5 January 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2021

Appeal Ref: APP/J1535/X/20/3253978

**Breach Barns Park, Breach Barns Lane, Galley Hill, Waltham Abbey
EN9 2AD**

- 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 Fred Sines against the decision of Epping Forest District Council.
 - The application Ref EPF/0400/20 CLD, dated 20 February 2020, was refused by notice dated 16 April 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 caravan site.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application sought an LDC for use as a caravan site, but the covering letter and the Council's decision notice stated that it had been made to establish whether the application site now forms part of the same planning unit as the caravan park. The appellant has confirmed that the appeal is being pursued in respect of a claimed lawful existing use of the land for recreational purposes and for storage, both ancillary to the caravan site. As the Council has not challenged this, and as it appears consistent with the decision notice and the definition of a caravan site in section 1(4) of the Caravan Sites and Control of Development Act 1960¹, I shall consider the appeal on that basis.
3. Amended site location plan 1468-0001-05, submitted in the course of the appeal, reduces the site by removing 2 areas occupied by utility assets. Having sought the Council's view, I am satisfied that this can be substituted for drawing 4680-0 01-04 listed in the decision notice without causing injustice.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the appellant can show, on the balance of probability, that recreation and storage use of the appeal site ancillary to the

¹ "Land on which a caravan is stationed for the purpose of human habitation and land which is used in conjunction with land on which a caravan is so stationed"

caravan site at Breach Barns Park (the Park) is lawful due to the passage of time. The evidence should show the use began on or before 20 February 2010, which is the relevant date, and has continued thereafter without significant interruption.

Reasons

5. In an LDC appeal the burden of proof is on the appellant to produce evidence. However, if there is no other evidence to contradict or otherwise make his version of events less than probable, there is no good reason to refuse the appeal.
6. The appellant contends, with reference to the judgement in the *Burdle* case², that the appeal site and the Park form a single planning unit. The application form states that the change of use occurred on 1 January 2007. Precise and unambiguous evidence of this, and that the claimed use has continued without significant interruption over a 10-year period since then, would be sufficient for an LDC to be granted on the balance of probability.
7. The largest part of the site is a field of rough grassland (the field). This is separated from a smaller area which lies immediately south of a row of trees, with soil tipped between, and a field gate. This smaller area (the southern part) is largely covered with building rubble, hardcore and some general waste.
8. The appellant states that the field has been used by Park residents as parkland/amenity/recreation areas and that the southern part has been used as a service area for the Park, both for over 10 years.

Use of the field

9. The field is annotated 'Recreational Area and Football Pitch' on a drawing forming part of a planning application for a caravan park approved in 1961³. However, the appellant concedes that the field does not appear to be in the approved red line area, and it is not known whether it had any physical or functional connection with the Park at the time.
10. The application included 20 statutory declarations, 19 made by current residents of the Park in a common format. The residents all stated that "the whole of this field" has been consistently used as recreation land associated with the Park and that they had used it regularly, and seen others do so, for between 5 and 40 years, depending on their length of residence. No indications of the nature of the recreational activities were given. The wording included a prompt to the person making the declaration, asking if they can add anything about how they saw the field used or any other recollection, which would have made the evidence more precise. None provided anything in response.
11. Three residents confirmed they have lived at the Park for less than 10 years, one since 2013 and the others since 2015, but all 3 claimed to have regularly used the field for more than 10 years. None provided an explanation for this ambiguity. A similar issue arises with a fourth declaration, in which the resident stated that she has lived at the Park since 1996 but has used the field for more than 40 years. However, this ambiguity does not affect whether the use began on or before 20 February 2010.

² *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

³ WHX/0104/61, granted 24 May 1961

12. It is stated in the application documents that the current owner acquired the Park in September 2003 and has operated it ever since, spending on average 6 days per week there. However, the owner confirms in a statutory declaration that he acquired the Park in 2007 and has visited it on a weekly basis since. While this ambiguity is of concern, I afford greater weight to the version of events in the statutory declaration. It states that the land has been consistently used for a variety of purposes in association with the Park since 2007. One recreational activity, dog walking, is identified. The declaration also states that some mobile homes have extended their gardens into the land but does not indicate when those extensions occurred or on what basis, for example under a rental agreement, thus lacking precision.
13. A public right of way passes through the field, running near, and broadly parallel to, the eastern boundary. Immediately to the west is a row of fence posts. The posts in the northern section of this row and on a return that runs parallel to the northern boundary are connected by barbed wire, forming a distinct barrier between the centre of the field and its northern and north eastern fringes.
14. My site visit was made during winter, and only provides a snapshot of the use of the appeal site. However, I saw no evidence to suggest that people had accessed the area to the west of the fence posts for any recreational purpose. While numerous deer tracks were visible within the field, including on part of the public right of way, I saw no equivalent signs of recent use by people, with or without dogs.
15. Parts of the field, including around its perimeter, appear to be mown in aerial images taken in 2003 and 2005 although none of the declarations mentioned this. A line around the perimeter of the field, possibly a path, can be seen in 2 images from 2013 and appears more faintly in images taken in 2009 and 2017. The resolution in the remaining images is too poor to see this feature, if it existed then, so it is not, of itself, indicative of a recreational use over a 10-year period.
16. A circular route is also apparent in the centre of the field in the 2005 image, but this is not discernible in any of the later images and would therefore appear to have been short-lived. A small feature can be seen to the west of the footpath, roughly halfway through the field, in nearly all the images but it is not clear what it is. I did not see it on my visit and none of the declarations mention it. While it is claimed that several aerial images from September 2006 onward show that the field was managed as parkland, the owner's statutory declaration gives no detail of how he maintained it after acquiring it in 2007. Of itself, the evidence of the aerial images does not show that a material and lasting change in the character of the land occurred on or before 20 February 2010.
17. Significantly, no evidence has been presented of the landowner granting any consent for recreational use, for example in marketing the Park or in tenancies, licences or sales documents. Such evidence would confirm that recreational activity on the land had been consciously facilitated, indicating a functional connection between it and residency at the Park.
18. Owing to the absence of detail in the declarations and the limited information available from the aerial images, the evidence suggests only sporadic and fluctuating activity. While it is reasonable to assume continuous recreational

use of the public right of way crossing the field, it is not claimed that this would have changed the planning status of the field, and no evidence has been presented to that effect.

19. A key issue in determining the appellant's claim regarding the planning unit is whether the Park and the appeal site are physically and/or functionally separate. I saw a degree of physical separation, evident in fences enclosing the adjacent static caravans on First Avenue.
20. Several of these adjacent mobile homes have gates or steps leading to the eastern fringe of the field and I saw that some occupiers have mown the areas immediately beyond and have used them as garden extensions, consistent with the owner's declaration. However, the precise boundaries of any such garden extensions have not been identified. Other than these private accesses, no direct communal link between the land and the Park was visible and none was drawn to my attention.
21. None of the statutory declarations was made by a person who formed or has occupied a garden extension on the land. Some of the aerial images, notably those from 2010, 2013, 2017 and 2018, and one taken at some time between 2006 and 2010, suggest garden extensions may have existed at those times. However, this is largely conjecture owing to the poor resolution of most of those images. Nevertheless, viewing the images collectively, and from what I saw on site, any garden use by adjacent occupiers will, as a matter of fact and degree, have been limited to small areas on the eastern fringe of the field.
22. The fence posts alongside the public right of way follow a line on the Ordnance Survey base of the site location plan and are evidence of historic division of the field, although the fence has not been maintained of late. While it may be argued that garden extensions are ancillary to the caravan site, even if they were lawful, they are limited to the eastern fringe, separated from the rest of the field by the public right of way and the adjacent fence line. They can therefore be distinguished from the main part of the field. Accordingly, if the extent of land used as a garden extension was known, and that use was found to be lawful, it would constitute a separate planning unit from the field.
23. The great majority of Park residents do not live immediately adjacent to the land and do not have direct access to it. Any recreational use by those residents would therefore only be possible by going out of the Park entrance and using the public right of way to access the field. While this route only involves land owned by the Park operator, it is indirect and does not establish a physical connection between the appeal site and the Park in the same way that a communal access from First Avenue would. Therefore, and taking all of the foregoing evidence into account, it has not been demonstrated that the field is not physically and operationally separate and distinct from the Park as a whole.
24. It has therefore not been demonstrated, on the balance of probability, that recreational use of the field ancillary to the Park began on or before 20 February 2010 and has continued thereafter without significant interruption. While there is evidence of garden extensions, these have been physically and functionally distinct from the remainder of the field and it has not been demonstrated, on the balance of probability, that this began on or before 20 February 2010 and has continued since without significant interruption.

Use of the southern part

25. The application covering letter describes the southern part as a maintenance yard and as a service yard/storage yard, in each instance associated with the Park. It is described in the appeal statement as a service area for the Park.
26. The owner's statutory declaration refers to maintenance/storage purposes ancillary to the operation of the Park but does not say what activity this has involved. The other 19 declarations refer to a service yard for storage of materials and equipment. Despite the prompt noted earlier, none of the 19 provided any further information. Also as noted, 3 declarations were made by people who have not resided at the Park for 10 years, although they claimed to have 10 years' knowledge of the site. No declaration by any person involved in carrying out storage or maintenance on the land has been submitted.
27. The only other evidence of any maintenance or service activity or storage, including any equipment that may have been stored, is what may be inferred from the appellant's aerial images, although these cannot demonstrate any connection with the Park. Where the resolution in the images allows any detail to be discerned, it appears to indicate deposit of materials, or waste, and some commercial vehicles, although whether those vehicles were in active use, parked or in storage cannot be told. In 3 images, larger objects that could be mobile homes can be seen, although the resolution is too poor to provide precise and unambiguous evidence to that effect.
28. I saw significant quantities of soil and rubble, segregated in heaps, on this part of the land. However, no evidence that these materials originated from the Park, or have any other connection with it, has been provided. I also saw some discarded domestic items in this area, although it was not evident whether that resulted from planned activity or fly tipping or if the items originated from the Park. No evidence of any maintenance activity could be seen.
29. Accordingly, it has not been demonstrated, on the balance of probability, that storage use or any maintenance or service use of the southern part ancillary to the Park began on or before 20 February 2010 and has continued thereafter without significant interruption.

Conclusion

30. 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