



Appeal Decision

Inquiry Held on 2-4 June 2021

Site visit made on 8 June 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th June 2021

Appeal Ref: APP/Y9507/X/20/3252974

Woodside Farm Campsite, Gosport Road, Alton GU34 3NJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Michael Ellis against the decision of East Hampshire District Council on behalf of South Downs National Park Authority.
- The application Ref SDNP/20/00629/LDE, dated 10 February 2020, was refused by notice dated 12 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 the use of land as a caravan site.

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

1. A second application for an LDC has been submitted to the South Downs National Park Authority (SDNPA) under reference SDNP/20/04649/LDE. That has not been determined and is not subject of this appeal. Evidence in support of that application was submitted with this appeal.
2. During the course of the Inquiry, the appellant and East Hampshire District Council on behalf of the SDNPA came to an agreed position on the lawful use of the land outlined in red on Drawing No: 5451-0191-001 (June 2021). That was as follows:

Mixed use as a caravan and camping site operating all year round, comprising fourteen (14) residential caravans, twenty five (25) touring holiday caravans, and the siting of tents.

3. I note that use specifies numbers of caravans, their use for either residential or holiday purposes and includes the siting of tents. The site over which it was agreed the use operates extends beyond the red line submitted with the application toward neighbouring residential properties. That encompasses two buildings that were suggested to have been used in association with the use of the land as a caravan and camping site.
4. Whilst that forms the agreed position of the Council and appellant, the appeal is for me to determine and it is open to me to come to an alternative view.

Nevertheless, that agreed position must carry significant weight in my considerations.

5. Further to that agreement, the Council on behalf of the SDNPA set out how they would interpret any certificate issued in those terms. It is not for me to comment on that interpretation.
6. My attention has been drawn to the judgements in *Barton Park Estates Limited v Secretary of State for Housing, Communities and Local Government and Dartmoor National Park Authority* [2021] EWHC 1200 (Admin) (Barton Park) and *Breckland District Council v Secretary Of State for Housing, Communities and Local Government and Plum Tree Country Park Ltd* [2020] EWHC 292 (Admin) (Breckland). I have taken these into account in coming to my decision.
7. All evidence to the Inquiry was given on oath.

Reasons

8. Section 195 of the Act states that I should grant an LDC under Section 191 of the Act if I were to find that the Council's decision was not well-founded. Therefore, the main issue in this case is whether the decision of the Council on behalf of the SDNPA was well-founded. This relates to the decision rather than the reasons for taking that decision, so I am entitled to consider all the facts before me in reaching my decision. This means that, even if the Council's decision on behalf of the SDNPA was well-founded when it was taken, it may not be now given the additional evidence presented in support of the later application and at the Inquiry. My decision will, therefore, take account of that additional evidence and I will consider whether the decision was well-founded in light of that.
9. Section 191 of the Act states that operations are lawful if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason). Section 191(4) of the Act also allows the local planning authority to modify the terms of the application, and to issue an LDC in somewhat different terms to those applied for, so that it accords with the facts and evidence. This power is also granted to the Secretary of State or an Inspector in the case of an appeal.
10. The burden of proof in support of an LDC is on the appellant, with the relevant test of the evidence being on the balance of probability. Evidence does not need to be corroborated by independent evidence to be accepted. Planning Practice Guidance¹ (PPG) states that if there is no evidence from the Council, SDNPA or others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application. However, the applicant's evidence needs to be sufficiently precise and unambiguous to justify the grant of an LDC.
11. Section 171(3) of the Act states that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The use of land as a caravan site would become lawful were it to have continued for

¹ PPG Paragraph: 006 Reference ID: 17c-006-20140306

a period in excess of ten years. The relevant date for determination is the date of application of the LDC, i.e. 10 February 2020.

12. Evidence presented at the Inquiry by residential occupiers of the caravans indicated that there were always between approximately 10 and 15 caravans in the period from 2008 that were occupied residentially. Given the nature of the use, numbers of residentially occupied caravans may have fluctuated in that period. Nevertheless, evidence from the occupiers was consistent, precise and unambiguous. The Council has accepted that the appropriate figure for any certificate would be 14 and I see no reason to disagree with that conclusion.
13. The residentially occupied caravans now consist of touring caravans, including Winnebago, and three static caravans that I was able to see on my site visit. At least one of those static caravans was brought onto the site during the relevant period. Given that there has been some fluctuation in the number of touring and static caravans, it would not be possible to specify the number of each in this particular case.
14. Most of the touring caravans are normally located under the trees in the woodland to the side of the open field that forms the majority of the site area. I understand that this location was chosen as caravans can get very hot in the summer and the shade of the trees helps keep the caravans cool. It also reduces the need for caravans to move, which can be inconvenient to occupiers, when the warden needs to cut the grass and allow grass to regenerate following a period with a caravan on it. However, it does mean that the caravans can't be seen under the canopy of trees on aerial photographs. Taking account of those factors, I consider that these touring caravans weren't deliberately concealed.
15. In terms of numbers of holiday units (i.e. touring caravans and tents, whether occupied by holiday-makers or contractors working in the area), maximum numbers varied in the evidence. It is clear that all the numbers were estimates and no written records were presented. I understand that most visitors pay in cash with receipts only provided when requested, which is unusual for holiday-makers. The number of visitors has fluctuated taking account of the weather, school holidays and other factors. The site is open for holiday units throughout the year and reference was made to people visiting for Christmas and contractors staying as and when they needed to for work. Evidence from one Statutory Declaration suggested that up to 75-100 holiday units have visited the site at any one time, although most evidence suggested the maximum number has been around 50 of which half were touring caravans. Again, the figure of 25 touring holiday caravans agreed by the Council appears to be appropriate. No figure has been put forward as to the maximum number of tents. Given the wide disparity in the estimated maximum number of holiday units, it would not be possible to provide a number of tents within any LDC.
16. The Barton Park and Breckland judgements referred to above related to the definition of the use of caravan sites. These indicate that it is necessary to be precise as to the number of caravans in order to define the use such that it can be monitored and regulated by the Council and SDNPA in the future. Consequently, I will specify the number of caravans on the site. As set out above, these comprise 14 that are permanently residentially occupied and 25

that are temporarily brought onto the site for occupation by holiday-makers and contractors.

17. At the Inquiry, I heard that the buildings located close to the access to the site contained storage relating to the caravan site use, including a mower, strimmer and other maintenance equipment. On my site visit, I was able to see inside the enclosed building and it is also used for storage by occupiers of the residential caravans. The metal framed pole barn contains the residentially occupied Winnebago, another unoccupied caravan, van and other storage. These buildings were in that location for the whole of the relevant period. No evidence was produced as to any other uses within the buildings. The Council has concluded that they and the land immediately surrounding them have been used as part of the caravan site for the relevant period, so should be included within the area relating to the LDC.
18. I note that these buildings and surrounding land are outside the red line of the plan within the submitted application. They are located between the land originally identified in red and neighbouring residential occupiers. If I were to include this land, I would need to take account, in the interests of natural justice, of whether anyone would be prejudiced by the inclusion of this land within any LDC. In this case, this would primarily be the residents of the dwellings over the access track and bridleway from the additional land. I note that a neighbour and other interested parties attended the virtual Inquiry. No substantive evidence has been put forward to contradict that set out by the appellant relating to the use of the buildings and surrounding land.
19. Whilst the amended site boundary would be closer to neighbouring dwellings, the appellant and the Council on behalf of the SDNPA have agreed that the lawful use extends over this land. If I were not to include this land, I consider the Council would be likely to issue an LDC in these terms in any event.
20. Taking all these factors into account, the issue of an LDC, including over that land, would not result in injustice to neighbouring occupiers. As I see no reason to disagree with the Council's conclusions in this regard, I accept that this land should be included within the site on a plan attached to any LDC.
21. The main access to the site is via a long and winding track from the road. There is another access shared with neighbouring houses that appears to pre-date that access. The main access is not within the area outlined in red on the submitted plans and I have not been provided with evidence relating to when use of that access commenced. Consequently, it would not be possible to include this within the site area for the LDC.
22. Reference has been made to a shower block within the site. That appears to have been constructed within the relevant period, but it is unclear when. Consequently, I have limited evidence as to its lawfulness. In any event, it was not referred to in the application for the LDC or the Council's decision. Consequently, it won't be referred to in any LDC resulting from this appeal.
23. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the mixed use as a caravan and camping site operating all year round, comprising fourteen residential caravans, twenty five touring holiday caravans, and the siting of tents was not 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.

Decision

24. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Rudd of Counsel, instructed by Patrick Barry, Nova Planning

Michael Ellis Appellant

Lydia Forrester

Anthony Black

Elizabeth Chambers

Michael Biddis

Oliver Jones

William Fuller

Nick Laister BA Hons DipTP MRTPI MIPI MIHT

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Leader, Barrister instructed by Ms Julia Mansi, Building and Development Control Manager, Havant Borough Council

INTERESTED PARTIES:

Sam Plumbe Neighbour

DOCUMENTS SUBMITTED AT THE HEARING/INQUIRY:

Document 1: Photograph of Manure Management Risk Map

Document 2: Appeal decision reference 3217988 and High Court judgement of *Barton Park Estates Limited v Secretary of State for Housing, Communities and Local Government and Dartmoor National Park Authority* [2021] EWHC 1200

Document 3: Woodside Electric Records

Document 4: Revised Site Location Plan

Document 5: Agreed Position of the Appellant and East Hampshire District Council on behalf of the South Downs National Park Authority and Drawing No. 5451-0191-001 (June 2021)



Lawful Development Certificate

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

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

IT IS HEREBY CERTIFIED that on 10 February 2020 the operations 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 would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated, on the balance of probability, that the use of land as a caravan and camping site as described in the First Schedule continued for a period in excess of 10 years prior to 10 February 2020 such that no enforcement action could be taken in accordance with Section 171(3) of the Act.

Signed

AJ Steen

INSPECTOR

Date: 30th June 2021

Reference: APP/Y9507/X/20/3252974

First Schedule

Mixed use as a caravan and camping site operating all year round, comprising fourteen (14) residential caravans, twenty five (25) touring holiday caravans, and the siting of tents.

Second Schedule

Land at Woodside Farm Campsite, Gosport Road, Alton GU34 3NJ

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

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 30th June 2021

by AJ Steen BA (Hons) DipTP MRTPI

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Not to scale

