



Appeal Decision

Inquiry Held on 8 & 9 June 2021

Site visit made on 10 June 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2021

Appeal Ref: APP/C3430/X/19/3220179

Field adjacent to Star Mobile Home Park, Lawn Lane, Coven WV9 5AY

- 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 Asa Hartley of Hartley Park Homes against the decision of South Staffordshire Council.
 - The application Ref 18/00233/LUE, dated 20 March 2018, was refused by notice dated 8 November 2018.
 - 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 storage of building and other materials and horticultural waste in connection with the day to day use of the adjoining land known as The Star Mobile Home Park. The use is not a separate storage use, but is ancillary to the use of the adjoining caravan park.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant submitted a plan alongside his application which included the entire field outside of, but adjacent to the Star Mobile Home Park ('Star Park'). Prior to determination, an amended plan, which comprised part of the field, was submitted without prejudice to the appellant's view that the whole of the application site has been used for over 10 years for the stated use. I shall consider the amended plan in the first instance, since it falls within the wider site.
3. The use for which a certificate of lawful use or development is sought is described as: 'storage of building and other materials and horticultural waste in connection with the day to day use of the adjoining land known as The Star Mobile Home Park. The use is not a separate storage use, but is ancillary to the use of the adjoining caravan park.' Section (s)191(4) of the Town and Country Planning Act ('the Act') 1990 (as amended) allows the local planning authority to modify the description of the existing use, operation or other matter. For the avoidance of doubt, it was agreed during the inquiry that the description should be modified to 'the storage of building and other materials and horticultural waste, ancillary to the use of The Star Mobile Home Park as a caravan park'.

Reasons

4. An application under S191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land was lawful at the time of the application.

- S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
- i) No enforcement action may 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); and
 - ii) They do not constitute a contravention of any enforcement notice then in force.
5. The main thrust of the appellant's case is that the ancillary use of the site for storage of building and other materials and horticultural waste in connection with the day to day use of Star Park commenced in January 2004 and, whilst it has fluctuated, it has never ceased. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. That will turn on whether the storage use constituted a breach of planning control and, if so, whether the breach began more than 10 years before the date of the application and continued for a period of 10 years thereafter without significant interruption.
 6. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. Planning merits form no part of the assessment of an application for a LDC under S191 of the Act. The proposed development must be considered in the light of the facts and the law.

Planning Unit

7. When deciding whether a use would be ancillary, it is first necessary to identify the planning unit. I raised a query with the parties regarding the correct planning unit prior to the inquiry. The appellant's barrister set out two options during the inquiry: the caravan park plus the appeal site is the planning unit, with the use of the appeal site being ancillary to the use of the caravan park; alternatively, the appeal site is the planning unit. If it is the latter, that indicates the use is not 'ancillary' as described and a further change to the description may be required.
8. The appeal site comprises part of a field which is adjacent to the Star Park and is separated from the caravan park by an agricultural style gate and a mixture of close boarded fencing and chain link fencing. Wooden posts had been erected temporarily in the site by the appellant for the purposes of my visit, to mark out the appeal site, though there was no clear delineation between the appeal site and the remainder of the field. There was a disused mobile home in the site and various stockpiles of materials, including rubble, logs and wood chip and piles of bricks, breeze blocks, machinery, netting, and other paraphernalia at the time of my visit.
9. The appellant has provided a statutory declaration, dated 19 March 2018, which sets out how he has used the site since 2004. The statement provides detail regarding the use of the site for each year and is supplemented by a Further Statement, dated 14 July 2020. In particular, the Statement details pitch redevelopment in certain years, the installation of a new drainage system in 2011 and the replacement of a section of road in 2012. The appellant advises that his approach is to buy in bulk and that he normally orders sufficient material for the development of 3 or 4 pitches in one go, with materials stored on the site until they run low.
10. The statutory declarations of Mr Anthony Pedley, who has worked with Hartley Park Homes since 2003, and Mr Frederick John Batley, who has worked for Hartley Park Homes since April 2011, similarly explain the process of buying in bulk, storing materials in the field and reordering when supplies run low.

Appended to both declarations are plans showing areas 1-5 within the appeal site, which it is stated are used for storage of building materials, equipment and vegetation from the park.

11. A letter sent by Mr Burns also outlines the use of the field for the storage of materials and the tipping of old materials within the appeal site. During the inquiry, Mr Burns confirmed seeing the storage of building materials within the site during his visit to Star Park in 2009, including bricks, blocks, old drainage units and gulleys which he assumes had been left over from other jobs. He also advised that when he carried out the road replacement in 2012, road planings were stored within the field which, in his view could be reused.
12. The appellant has submitted photographs referred to as exhibit "AH5" in his statutory declaration, which were taken on 12 February 2018 and 16 March 2018 and which are stated to be representative of the type and level of use that has been ongoing in the field since 2004. Although there are modest piles of blocks and bricks which are stored in an orderly fashion and could be used within the site, there are substantial piles of paving slabs and rubble which I consider are unlikely to be used within the Park without some sort of processing and which are more likely to be removed for disposal or management off site.
13. This is consistent with Mr Pedley's statement, which states that excavated concrete bases and rubble were kept in the field for a grab load to collect. Mr Pedley also explains a number of times in his statutory declaration that the dismantled sections of mobile home were stored within the field before they were removed by a grab lorry. Such items would, in my view, be considered waste since the appellant intends to discard them.
14. Concerns have been raised by a number of interested parties that the appeal site is used to store material arising from outside Star Park. The Council suggest that the appeal site is likely to have been used to store materials for use across the Parks operated by the appellant. During my visit, I saw that Brookside Park is located on the opposite side of Lawn Lane to Star Park. Indeed, Mr Pedley confirmed during the inquiry that when carrying out work at Brookside Park he would look to see if there were suitable materials in the appeal site first. Given the proximity of the two parks, I agree it is highly likely that workers at the site would have used suitable materials from the appeal site for works at Brookside.
15. In *Harrods v SSETR* [2002] JPL 1258, it was held that the functional relationship between a primary use and ancillary use should be one that is normally found and not based on the personal choice of the user. Although I accept on-going maintenance of the site necessitates the use of building materials and will generate waste, the storage of such significant quantities of materials and waste in one location is not a functional relationship that is, in my view, normally found within a caravan park.
16. While the redevelopment of a plot would generate waste and necessitate the delivery of building materials, the placement of such materials in bulk in the appeal site is likely to generate further noise and dust, as is its subsequent removal. The storage of building materials, excavation waste and dismantled mobile homes, whilst arising from the park, has an industrial character which is at odds with the residential nature of the park. Consequently, the storage of waste arisings and buildings materials in the appeal site is likely to have a

much greater impact on the living conditions of occupants of the Star Park compared with the redevelopment activities which would ordinarily take place in the park itself.

17. The appeal site, although physically separated from the caravan park by fencing and a gate, is clearly visible from a number of mobile homes within the park, which back onto the field. The storage of significant quantities of rubble, sections of old mobile home and other materials has a different character to that of the park and, whether or not it is used exclusively in connection with Star Park, is in my view, a physically separate area which is occupied for a different purpose. There is physical and functional separation from the caravan site and the appeal site should be considered a separate planning unit. Consequently, as a matter of fact and degree, I conclude that the ancillary use applied for is not what has taken place. There is not an ancillary use but a primary storage use within the appeal site as a separate planning unit.
18. Nevertheless, I am obliged to issue an LDC for any use or development that is shown to be lawful on the facts and evidence. The storage use within a separate planning unit will have constituted a material change of use of the land in breach of planning control. I will therefore consider whether, on the balance of probabilities, the use of the site for the storage of building and other materials and horticultural waste¹ has continued for a period of at least 10 years so as to be immune from enforcement action.

Continuity of use

19. As established in *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 and confirmed in *Swale BC v FSS & Lee* [2005] EWCA Civ 1568; [2006] JPL 886 and *Islington LBC v SSHCLG & Maxwell Estates* [2019] EWHC 2691 (Admin), a use can only become lawful if it continued throughout the relevant period, to the extent that the local planning authority could have taken enforcement action at any time. If the use ceased during that period, as a matter of fact and degree, the time could not count towards immunity.
20. The appellant has provided a series of invoices which indicate a range of building materials have been supplied to Star Park. Whilst some of the invoices provided do not appear to relate to deliveries to Star Park, the majority of the invoices do. However, although the invoices cover a number of years between 2005 – 2017, no invoices are provided for 2012, 2013 or 2015 and the invoice provided for 2014 relates to skip hire only.
21. Mr Pedley explained at the inquiry that during 2013 he would have been required to do maintenance jobs infrequently ('not very often'), about 5 to 10 times a year, which would have included repairs to fencing, steps and electrical work. In his statutory declaration, Mr Batley details carrying out some fencing work in 2013 using materials that were stored in the field, in addition to general maintenance to vegetation around the Park, the cuttings of which were stored in the field. Mr Batley also details a water leak in 2014, which required excavation and repair work to the pipe and existing roadway, using materials that were stored in the field and states that in 2015 and 2016 he carried out general maintenance.

¹ Not ancillary to the use of Star Park

22. The appellant asserts that deliveries may still have been made to the site during the period 2013 to 2016. However, as detailed within his statutory declaration, no pitch redevelopment took place between 2010 and 2016, and although a new drainage system was installed in 2011 and a large section of road at the park was replaced in 2012, no other significant works are detailed as occurring between 2013 and 2016. Indeed, the appellant confirms in his Further Statement that there were lower levels of use between 2013 and 2016.
23. The appellant details use of the field for storage of trees removed from the park by Arborists in 2010, 2013, 2014, 2015 and 2016. However, a letter sent by an employee of Rob Keyzor Tree Surgeons & Arboricultural Consultants Ltd confirms that they have only attended Star Park on 2 or 3 occasions, the last being May 2016. The appellant advised during the inquiry that Mr Batley, although not an arborist, does tree work. Although this is consistent with Mr Batley's statement, it does undermine the appellant's account in this regard.
24. The appellant suggests that despite lower levels of use, there would always have been bricks, blocks, drainage pipe, stone aggregate, cement and reclaimed asphalt in the site. However, aerial photographs submitted by the appellant, dated 31 December 2010² and 20 April 2016 show very little storage outside areas 1 and 2, as shown on the plan appended to Mr Pedley's statutory declaration. Aerial photographs submitted by the Council, dated 14 April 2015 and 15 July 2015 similarly show limited storage across the site.
25. Whilst I accept vegetation can limit what can be seen in an aerial photograph, the limited levels of storage seen in the 2015 and 2016 photographs provided by the Council would be consistent with lower levels of work being carried out within the Star Park. Even in years when there was stated to be a greater level of activity, such as 2007, when pitch redevelopment took place and in 2011 when the drainage works were carried out, although the ground appears disturbed, in my view the site appears little used for storage.
26. Materials stored in the site on 5 April 2018, by contrast, are clearly visible on the aerial photograph. Whilst this is after the date of the LDC application, I consider it highly unlikely that materials stored across the site would be visible in this aerial photograph but not in the earlier photographs, simply because of vegetation. Furthermore, even if materials for the redevelopment of pitches were stored in the site between 2013 and 2016, the way in which the site would have been used during this period would be fundamentally different to preceding years, when greater levels of activity would have been occurring. For example, vehicle movements, noise and dust generated by the depositing and removal of materials, whether virgin building materials or waste, would have fundamentally changed the character of the site.
27. I accept the application use does not need to have occurred on every square inch of the appeal site throughout the relevant 10 year period. Nonetheless, such low levels of use on a correspondingly smaller part of the site would have been subsidiary to the primary use of Star Park and so would not have been a primary use on its own.
28. In April 2017, the site was investigated by an Enviro Crime Enforcement Officer, Mr Littleton, in response to a complaint regarding the untidy nature of the land and the effect it was having on local amenity. Whilst Mr Littleton did

² The precise date of this is in dispute given vegetation within the site.

not retain notes of his visit, photographs taken on 27 April 2017 appear to show, in addition to the storage of building materials, items of furniture and mattresses stored within the site.

29. A number of interested parties have written to the Council regarding the activities at the appeal site and consistently raise concern regarding the storage of waste or rubbish which is burnt on site. The Council has also provided two emails from residents of Star Park regarding 'rubbish' in the field, which points towards the site being used for the management of waste. Whilst the interested parties did not appear at the inquiry, this is consistent with the evidence provided by Mr Littleton and the letters sent by the appellant to two residents, dated 15 May 2017, which state that 'historically the area has been used to store garden and other waste prior to disposal'. As such, I give their evidence considerable weight.
30. The appellant, Miss Wittingham and Mr Pedley all confirmed during the inquiry that they are aware waste has been burnt within the site. Whilst the appellant suggests the burning of waste was predominantly limited to cuttings from trees, this is inconsistent with the representations made by interested parties. Furthermore, in his statement dated 14 July 2020 the appellant acknowledges that many of the objections that were received related to the burning of furniture and mobile homes and states 'we no longer burn any items and I have no intention of burning items on the field again.'
31. Miss Wittingham stated she believed furniture was burned on the site once or twice, however, this appears inconsistent with her written statement which states that 'furniture and items taken from empty mobile homes would be stored on the field until they were taken away to the tip or alternatively burned'. Furthermore, she confirmed during the inquiry that she is 'not based at the site and believes that is what is done'. I therefore afford Miss Wittingham's evidence in this regard limited weight.
32. As set out in *Panton & Farmer V. Secretary of State for the Environment, Transport & the regions and Vale of White Horse District Council* [1999] 78 P&CR 186, lawful use rights can only be lost by evidence of abandonment, the formation of a new planning unit, or by a subsequent change of use. The appellant suggests that the management of non-horticultural waste at the site was so *de minimis* as not to amount to a use of land or alternatively, it falls within 'other materials' in the application description.
33. I find the appellant's evidence regarding the management of waste within the site inconsistent and imprecise. In my view, it has not been demonstrated that the management of non-horticultural waste within the site was so *de minimis* as not to amount to a use of land. Even if I were to accept the appellant's argument it falls within 'other materials', I do not consider that lawful use rights for the use of the site for the storage of building and other materials and horticultural waste have been demonstrated, because the way in which the site has been used has changed so significantly over time.
34. Low levels of activity between 2013 and 2016 would, in my view, have resulted in a break in continuity of the use of the site for the storage of building and other materials and horticultural waste. Such use would have been subsidiary to the primary use of the caravan park and so would not have been a primary use on its own. Whilst this is what has been applied for, it has not occurred continuously for a period of at least 10 years since the fluctuation in activity,

both in terms of type and location has been to such a degree that a material change of use has occurred.

35. Whilst the field may not have been in agricultural use since 2004, it has not been shown, on the balance of probabilities that the site has been used for the storage of building and other materials and horticultural waste throughout the relevant period, to the extent that the local planning authority could have taken enforcement action at any time.

Conclusion

36. Accordingly, the appellant's evidence is not sufficiently precise and unambiguous and has not demonstrated, on the balance of probabilities, that the use of the site for the storage of building and other materials and horticultural waste, is lawful. Furthermore, and as already identified above, I have found that there is not an ancillary use but a primary storage use within the appeal site as a separate planning unit.

Overall Conclusion

37. Thus, 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 use of the site for the storage of building and other materials and horticultural waste, ancillary to the use of The Star Mobile Home Park as a caravan park 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.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Whale	Of Counsel
He called:	
Gary Burns	Witness
Asa Hartley	Appellant
Anthony Pedley	Witness
Joanne Wittingham	Witness

FOR THE LOCAL PLANNING AUTHORITY

Piers Riley-Smith	Of Counsel
He called:	
John Littleton	Retired Enforcement Officer, South Staffordshire Council
Laura Moon	Senior Planning Officer, South Staffordshire Council

DOCUMENTS SUBMITTED AT THE INQUIRY:

1. Council's opening statement.
2. Appellant's opening statement.
3. Closing submissions on behalf of the Council, including *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226, *Swale BC v FSS & Lee* [2005] EWCA Civ 1568, *Islington LBC v SSHCLG & Maxwell Estates* [2019] EWHC 2691 (Admin) and *Harrods v SSETR* [2002] JPL 1258.
4. Closing submissions on behalf of the appellant.