



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2022

Appeal Ref: APP/W1850/X/21/3276999

Saltmarshe Castle Caravan Park, Tedstone Wafre, Bromyard, Herefordshire HR7 4PN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Wyldecrest Parks Management Limited against the decision of Herefordshire Council.
 - The application ref 203817, dated 5 November 2020, was refused by notice dated 8 February 2021.
 - 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 'Use of land as a caravan site'.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. S1(4) of the Caravan Sites and Control of Development Act 1960 (CSCDA60) defines a caravan site as meaning 'land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed'. It is not necessary for caravans to have been on land for it to meet the CSCDA60 definition. The land does though need to have been used in conjunction with a caravan site.
3. Most of the land at Saltmarshe Castle Caravan Park is covered by a LDC for an existing use as a residential caravan park. In this appeal, the roughly rectangular area of land lying to the south-east of the land where caravans are sited, which is outside of the LDC, it is argued has been used for secondary activities that are incidental or ancillary to the primary use as part of the same overall planning unit.
4. By virtue of s191(2)(a) of the 1990 Act, uses are lawful at any time if no enforcement action may then be taken in respect of them because they did not involve development or require planning permission or because the time for enforcement action has expired. The relevant time limit in use cases is the end of the period of ten years beginning with the date of the breach. In this case, the LDC application was made on 5 November 2020 on the ground that the use began more than ten years before the date of the application. Against this background, the appellant needs to show that a material change of use of the land as a caravan site has subsisted on a substantially uninterrupted basis since at least 5 November 2010, hereafter referred to as the material date.

5. The onus to make out the case rests firmly with the appellant and the test of the evidence is the balance of probability.

Reasons

6. The appellant's earliest aerial photograph is dated 1 January 1999. There are several white dots along the northern boundary of the land next to the line of trees that maybe caravans, perhaps reflecting the claim that the land was used to accommodate touring caravans more than ten years ago. However, it has not been put to me that the dots are caravans and other than what I have picked out from this photograph, it shows no other discernible signs of an ancillary use of the land. There are, in any event, no details about how long the land may have been used by tourers or the frequency of this use. Also, tourers are now located more centrally within the main park. There is no substantive evidence of use from the appellant covering 1999 to 2009.
7. In 2009 a football pitch may have been on the land with permanent goalposts and white line markings. That may have been in the position shown on a plan prepared on 27 March 2020. However, whilst a street view image from 2009 shows two sets of goalposts, there is no detectable difference in the appearance of the ground/grass between them to show that the land was laid out or maintained as a pitch and there is no hint of white lines. It is also not clear from this photograph that the posts were permanent and, even if they were, this does not in itself support showing regular ancillary recreational use of the land or who by.
8. An aerial image dated 1 January 2009 predates the street view image. By zooming in closely it is just possible to make out what may be the goalposts seen in the street view image. However, if at this stage it is claimed the land was being used ancillary to the main caravan site, this photograph also does not show a marked-out football pitch or a pitch that could be picked out by, for example, the grass being a different colour possibly because it had been mown. There are some very subtle variations in the grass colour across the whole site and lines that might be a path, fences/field boundaries, but nothing that could be said to probably be a football pitch or anything else that could show any regular ancillary use for football or any other recreational activity. There may be a very small area of worn land that could coincide with an entrance to the site, but this also does not show anything notable to assist the appellant's case.
9. The appellant's evidence up to a year before the material date is very thin. It does not substantiate that there was probably a material change of use of the land to a caravan site. The next aerial photograph relied on is from 2013. There is nothing in terms of any other documentary evidence in the gap between 2009 and 2013. The material date is in this gap.
10. Therefore, whilst there are other later photographs and details, and information about land ownership, which does not necessarily demonstrate land use, I do not need to consider these because the appellant's evidence is not, as a matter of fact and degree, sufficiently precise and unambiguous to show that there was probably a material change of use of the land to a caravan site by use in conjunction with the main site that had begun by no later than the material date. This finding is notwithstanding whether the land is within the same overall planning unit as the LDC land, or a separate planning unit.

11. I have read the other appeal decision (Ref: APP/F2360/X/20/3254047). That Inspector was dealing with land mainly within a previous planning permission. For the land not covered by that permission he found that the use over the relevant ten-year period had not been shown. The circumstances of that appeal, other than the matter of the definition of a caravan site, are therefore of little relevance to this appeal. I give it little weight.

Conclusion

12. For the reasons given, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of land as 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.

Gareth Symons

INSPECTOR