The Planning Inspectorate

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 28th February 2022

Appeal Ref: APP/J0405/X/21/3283022
The Old Brickworks, Brick Kiln Lane, Bierton, Aylesbury HP22 5DA

- 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 Ecology & Arts Club Limited against the decision of Buckinghamshire Council.
- The application Ref 20/02325/ACL, dated 15 July 2020, was refused by notice dated 15 September 2021.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
- The certificate of lawful use or development is sought is to confirm that the siting of a caravan for human habitation throughout the year at The Old Brickworks/Bierton Lakes would not constitute a material change of use when compared to the existing Lawful Development Certificate ref. 04/02070/ACL.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Procedural Matters

2. The Council says that, on the evidence now available, it no longer opposes the issue of the LDC.

3. A site visit was not necessary to determine the appeal.

Application for costs

4. An application for costs was made by Ecology & Arts Club Limited against Buckinghamshire Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue in this appeal is whether or not the Council's refusal to issue the LDC was well-founded.

Reasons

6. The earlier LDC issued in 2005[1] under s191 of the Act (the 2005 LDC) provides that "The continued use of the land for the siting of a caravan used to provide a facility for preparing meals, taking shelter and rest breaks in association with the maintenance and operation of the fishing lakes and for occasional recreation purposes" is lawful.

[1] 04/02070/ACL

7. For all the reasons given by the appellant and the Council (and based on the case law cited), I agree with the findings of the officer report on the appeal application[2] that the evidence demonstrates (on the balance of probabilities) that a caravan sited on the land could be lawfully occupied for human habitation and that there is no wording in the 2005 LDC which restricts the duration or frequency of that occupation. It could therefore be used for human habitation throughout the year, without a material change of use occurring.

8. However, while the above has been uncontroversial between the main parties, the Council refused the appeal application on the basis that the use described in the 2005 LDC had been superseded by a materially different use of the land between 2006 and 2009; namely, that the caravan had been replaced by a building outwith the statutory definition of a caravan. Therefore, the Council argued, accrued rights had been lost and the s192 application subject to this appeal could not rely on the 2005 LDC for lawfulness. It was said that the appellant company had not shown otherwise to discharge its burden of proof.

9. Notwithstanding this reason for refusal, and following the submission by the appellant of a Caravan Inspection Survey and statutory declarations, the Council are now satisfied that the structure that had replaced the caravan on site at the time of the 2005 LDC was itself a caravan. Having considered the evidence carefully, including the new evidence, I find that I reach the same conclusion as a matter of fact and degree for the reasons stated in the Council's Statement of Case (pp 2-4)[3].

10. The Council has also invited me to consider appeal decision APP/V2635/X/20/3263735[4] which underlines the potential differences of planning significance between static caravans of larger sizes and touring caravans. However, the 2005 LDC does not specify the type of caravan and, as the Council has acknowledged in its submissions, it is a well-established principle of law that it is not possible to "look behind" a certificate which is unambiguous on its face.

11. Accordingly, there has been no material change of use causing the certificated lawful use of the land in 2005 to have been lost. The appeal proposal is within the terms of the earlier certificate and is lawful.

Conclusion

12. 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 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.

Andrew Walker

INSPECTOR

[2] 15 September 2021
[3] 15 November 2021
[4] 27 September 2021

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Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 15 July 2020 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The siting of a caravan for human habitation throughout the year would not constitute a material change of use when compared to the existing Lawful Development Certificate ref. 04/02070/ACL.

Signed

Andrew Walker
Inspector

Date 28th February 2022
Reference: APP/J0405/X/21/3283022

First Schedule
The siting of a caravan for human habitation throughout the year

Second Schedule

Land at The Old Brickworks, Brick Kiln Lane, Bierton, Aylesbury HP22 5DA

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

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Plan

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

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Scale: