



Appeal Decision

Site visit made on 18 January 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 28 March 2022

Appeal Ref: APP/J2210/X/20/3265699

Waterways Caravan Park, Reculver Lane, Herne Bay CT6 6ST

- 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 [hereafter referred to as "LDC"].
 - The appeal is made by Royale Parks (Reculver) Ltd against the decision of Canterbury City Council.
 - The application Ref 19/01539, dated 31 July 2019 was refused by notice dated 25 September 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the proposed use of land for the siting of caravans for occupation throughout the year.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The actual use involved, and set out above, is not specifically mentioned on the application form itself. I have, therefore, taken the wording from the supporting statement accompanying the application at the time of submission.
3. The relevant date for the determination of lawfulness is the date of the LDC application, in this instance 31 July 2019. The matter to be decided upon, therefore, is whether the development, if carried out at that date, would have been lawful.

Background

4. In 1994 under ref CA/93/01090/HBA, planning permission was granted to allow the siting of 192 static caravans. It was subject to a condition that no caravans on the site should be occupied between 31st January and 1st March in any one year. Then, in February 2017, under ref 16/01916 was issued under s191 for the proposed use of land for the stationing of caravans for the purposes of permanent residential occupation between 1st March to 31st January.
5. Subsequently, in July 2019 a further LDC was applied for under s192 which, from the application form, was effectively claiming that the use of land for the siting of caravans for occupation throughout the calendar year was not so material as to necessitate the benefit of planning permission.

6. The Council, in September 2019, on determining the application, worded the description 'lawful development certificate for proposed use of land for the siting of caravans', thereby omitting the wording "for occupation throughout the year". The reasoning given was that the proposed use would be in breach of planning conditions.
7. In essence, in appealing the above decision, the appellant is asserting that, as a result of the current use rights allowing occupation for 11 months of the calendar year, an extra month would not amount to a material change of use.

Reasons

8. Firstly, the site's planning history would tend to confirm that the relevant said condition from planning permission CA/93/01090/HBA, along with all others still capable of subsisting, remain applicable today. As such, the LDC applied for and issued in 2017 was unnecessary as the proposal's lawfulness had already been confirmed by the 1993 decision.
9. The wording of any LDC must reflect the proposal as applied for, and the Council should not have changed the wording of the 2019 application, which is now at appeal. However, given the Council determined that the LDC requested could not be issued I imagine that its description could be taken as shorthand for the full application which should, of course, include the wording "for occupation throughout the year". That said, unlike s191(4), which is applicable to existing uses, there is no equivalent power under s192 to allow the modification of the description. The decision acknowledges that precision is equally desirable under both provisions.
10. As such, there is no power to grant an LDC for something materially different to what is applied for. Even were I to consider that the additional period of occupation was not of significant materiality – and I note that the appellant is arguing this point with reference to *Hertfordshire CC v SoS & Metal and Waste Recycling Ltd* [2012] EWHC 277 (Admin), and also whether the continuation of a use with a temporary permission beyond its expiry date constitutes development, referencing *Avon Estates Ltd v Welsh Ministers* EWCA Civ 553 2011 – that is not strictly the issue here. Case law does not itself override statute, and the overriding factor in this appeal is that of the terms and conditions of the 1994 planning permission.
11. A certificate under either s191 or s192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate. With this in mind if I was to allow the appeal and issue the LDC, its wording must reflect the proposal, as applied for, and the words "for occupation throughout the year" would need to be included. However, with the restriction(s) from the 1994 permission still in effect, this would be clearly inconsistent with the unrestricted use now claimed by the appellant.
12. In the circumstances, the unrestricted use cannot be lawful under s192(1)(a), and this applies because, on the face of it, enforcement action could be taken for a breach of condition; that is unless the relevant condition has been breached such that it is immune from enforcement. In this connection the appellant states:

'It is more than likely than not that the conditions have been breached each and every year for the last ten years and accordingly the condition would no longer be enforceable.'

13. If that is the case then the LDC application should have been made under s191, instead. If, however, immunity cannot be satisfactorily demonstrated the question of whether the change to year round use would be a material change of use is not reached and the appellant's recourse might then be to seek either variation or discharge of the condition, or even an entirely new planning permission.
14. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a LDC was well founded, and the appeal does not succeed. I shall therefore exercise my powers under section 195(3) of the 1990 Act as amended.

Timothy C King

INSPECTOR