



Appeal Decision

Site visit made on 16 February 2022

by R J Perrins MA

an Inspector appointed by the Secretary of State

Decision date: 30 March 2022

Appeal Ref: APP/H2835/X/19/3226748

Overstone Lakes Caravan Park, Caravan Park and Premises, Ecton Lane, Sywell, NORTHAMPTON, NN6 0BB

- 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 Allens Caravans Estates Ltd against the decision of Wellingborough Borough Council.
 - The application ref WP/18/00645/LDP, dated 15 October 2018, was refused by notice dated 25 February 2019.
 - The application was made under section 192(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 described on the LDC application form as:
'Planning application WP/61/0140 grants unrestricted planning permission for the use of the whole of the Overstones Lakes Caravan Park as a caravan site. The applicant is seeking a lawful development certificate confirming that the land within the red line boundary can be lawfully used as a caravan site on which caravan units as defined by the Caravans Sites and Control of Development Act (CSCDA) can be positioned'.
 - This decision supersedes that issued on 20 March 2020. That decision on the appeal was remitted for re-hearing and determination by order of the High Court.
-

Decision

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

Preliminary Matters

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority.
3. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main consideration is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is firmly on the appellant to show that, on the balance of probability, the proposed use would have been lawful at the time the application was made to the Council.

4. Following the consent order quashing the previous appeal decision, the appeal is to be re-determined on the basis that the whole case is considered afresh. The quashed decision is treated as though it had not been made and is incapable of having any legal effect. I am able to take account of any new evidence or material changes in circumstances since the first site visit. Whilst the parties have not raised any new matters to be considered, Mrs Justice Lang when quashing the previous decision, raised a number of established principles along with matters relating to the site which cannot be ignored.
5. The first reflects the preceding paragraphs and reminds the reader of the limitations of what should be considered under a s195 appeal. Namely, reviewing the Local Planning Authority's reason for refusal and then deciding whether the reasons were well founded. Turning to the details of the case Mrs Justice Lang also found, with reference to *Burdle*¹, that the 1961 planning permission (as discussed below) permitted use as a caravan site and remained in force, including permission to station caravans in the appeal site (which I will refer to as "the CLOPUD area"). That cannot be ignored and refines the matters for my deliberation.

Main Issue

6. Whether the use of the CLOPUD area, as depicted by the red line application plan, as a caravan site on which caravans can be positioned was lawful on 15 October 2018.

Reasons

7. The Caravan Park "the Park" is located to the west of Ecton Lane south of the village of Overstone within the countryside. The Park contains seasonal static caravans, mobile homes, open areas for recreation, administrative and service buildings, shop, pool and Lakeside Club. Tennis courts, a bowling green and crazy golf course can also be found. The Park is currently used for both holiday and residential park homes. The CLOPUD area is open, recreational, land to the south of Ash Drive and to the west of the public house. No caravans were stationed on it at the time of my visit.
8. The Park has been used for the stationing of caravans since at least 1945 and Parish Council records indicate it was popular in the 1950s. Aerial images from 1953 show caravans on the land and caravan site licences issued by the Council allow up to 1075 caravans. Current numbers on site do not meet that. There is a wide ranging and extensive planning history including matters such as permanent residential use of caravans, weekend and holiday sites, changes of use, extension to residential use and construction of internal roads.
9. In 1961 a planning permission (ref:WR/1961/0149) was granted for the use of Overstones Caravan Park as a 'caravan site' (the 1961 permission). Given the findings of Mrs Justice Lang there can be no dispute that the permission remained in force. In addition, the plan referred to within the decision notice (ref:WR/61/140), shows plots around the edges and is annotated 'Approx. position for total of 36 casual parking places'. Whilst I accept there is no boundary shown on that plan there is some inevitability that I must find, as the court judgment sets out, that the CLOPUD area was included within the 1961 permission.

¹ *Burdle & Williams v SSE and New Forest DC* [1972] 1 WLR 1207

10. Turning to the matter of whether or not the planning permission was lawfully implemented. The Council contend that a time limit was imposed for the commencement of development and that no evidence had been produced to establish that it was implemented. However, there seems little merit in me rehearsing the arguments put forward with regards to implementation as again the court has been helpful. That is to say, the accompanying plan outlined where caravans would be stationed on the site including the CLOPUD area.
11. The 1961 permission was, as also set out by the judgment, in respect of a use instituted before the application was made. It was therefore a retrospective permission under what became s.20 of the 1962 Act. It followed that no time condition for the commencement of development was imposed so the permission did not lapse. That view is reinforced by the findings of *I'm Your Man*² which established the principle that any restriction on use must be imposed by way of condition. There was no such condition and the site continued to be used as a caravan site at all material times thereafter and the planning permission, including permission to station caravans in the CLOPUD area, remained in force. To be clear, I recognise that caravans may not have been stationed on the CLOPUD area. However, that is not distinguishable, in the context of use of the site as a whole, from any other recreational area or open space within it.
12. Furthermore, the same principle applies to the number of caravans that could be stationed on the CLOPUD area. Whilst the drawing, as set out earlier, referred to the approx. position of 36 plots, there are no limitations placed upon the permission either within the description or by way of planning conditions. To that end, I accept the appellant's argument that the appeal site could accommodate 46 caravans in accordance with an amended site licence and that would not, for the reasons set out, result in a material change of use of the site as a whole.
13. In coming to that view, I have considered the representations of interested parties and the Parish Council concerning a number of matters. They include the loss of the green open space, over population, the effect on utilities and traffic, a covenant regarding views, existing views of the green, flooding and sewage capacity, removal of the crazy golf amongst other matters. However, these go to either private interests or matters of planning merit which, as I set out above, are not for my consideration under a lawful development appeal. I have also taken into account the cases of *R v Ashford Borough Council ex parte Shepway District Council* [1999] P&CR 12 and *Barnett v SSCLG* [2008] EWHC 1601 (Admin) but find nothing to lead me to a different view.
14. Thus, on the balance of probabilities, and as a matter of fact and degree, I find that the 1961 permission, for use as a caravan site, incorporated the CLOPUD area. Furthermore, there was no requirement for it to be lawfully implemented as it was retrospectively made. Thus, on the evidence now available, I find that the Council's refusal to grant a certificate of lawful use or development in respect the use of the CLOPUD area as a caravan site was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

RJ Perrins INSPECTOR

² *I'm Your Man v Secretary of State for the Environment* [1998] 4 PLR 107



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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 15 October 2018 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 area subject of the application was included within the planning permission (ref: WP/61/0140) for the use of Overstones Lakes Caravan Park as a caravan site.

Signed

RJ Perrins

Inspector

Date 30 March 2022

Reference: APP/H2835/X/19/3226748

First Schedule

Use as a caravan site on which caravan units as defined by the Caravans Sites and Control of Development Act (CSCDA) can be positioned.

Second Schedule

Overstone Lakes Caravan Park, Caravan Park and Premises, Ecton Lane, Sywell, NORTHAMPTON, NN6 0BB

IMPORTANT NOTES – SEE OVER

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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 March 2022

by RJ Perrins MA

Land at: Overstone Lakes Caravan Park, Caravan Park and Premises, Ecton Lane, Sywell, NORTHAMPTON, NN6 0BB

Reference: APP/H2835/X/19/3226748

Scale: Not to Scale

