



Appeal Decision

Site visit made on 13 June 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2023

Appeal Ref: APP/D0840/X/22/3303508

Trekenning Tourist Park, Trekenning, NEWQUAY, Cornwall, TR8 4JF

- 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 Mr and Mr Maurice Black and Foster Black and Lee against the decision of Cornwall Council.
 - The application ref PA22/02732, dated 18 March 2022, was refused by notice dated 15 June 2022.
 - 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 the change of use of land from equestrian/agricultural to leisure for Trekenning Tourist Park (Caravan Site) for as continuous period of no less than 10 years prior to the application.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt the planning merits of the existing use are not relevant and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The appellant needs to demonstrate on the balance of probability that the change of use occurred more than 10 years before 15 June 2022, which is the date of the application, and that the breach has occurred continuously to achieve immunity from enforcement action.
4. The onus of proof rests with the appellant.

Main Issue

5. I consider the main issue is whether the Council's decision to refuse to grant an LDC was well founded

The site and relevant planning history

6. The appeal site is an area of land west of the A39 and south of a roundabout junction with the A3059. The west boundary of the site is defined by another roadway which appears to be a redundant stretch of the earlier A39 before the construction of the roundabout.

7. The appeal site is physically detached from the Trekenning Tourist Park and is accessed through a field gate at its north end and accessible by pedestrians at its south end. It is well screened by established vegetation and there is a board advertising Trekenning Tourist Park close to the roundabout.
8. There are a number of old permissions for an agricultural shed dating from the 1980s. The Council refers to three applications in 2011, 2015 and 2022 relating to the Trekenning Tourist Park, none of which include the appeal site although it is indicated as land edged blue as other land in the appellant's ownership in the 2022 application. I note that the appellants state that had the site been identified with a red line, it would have been rejected by the Council in view of the refusal of the LDC application subject to this appeal.

Reasons

9. Reference is made by the appellants to the Caravan Sites and Control of Development Act 1960 in which a 'caravan site' means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with the land on which a caravan is so stationed. The appellants consider that the appeal site has been used in conjunction with Trekenning Tourist Park for more than the last 10 years and has therefore become a caravan site. However, Trekenning Tourist Park and the appeal site are physically separated and represent separate planning units being occupied for different purposes. One is a developed tourist park with supporting physical infrastructure. The appeal site on the other hand is a field. As the appeal site is detached from the Tourist Park as a matter of fact and is not part and parcel of the same, it is difficult to see how the meaning of a caravan site assists the appellants.
10. The appellants have submitted four statutory declarations in support of their case.
11. Mr Aiden Johns' declaration is on behalf of his mother. He states that his parents bought the appeal site about 30 years ago and they made arrangements with the Trekenning Tourist Park to use the land which continued uninterrupted from 2005/06 and it is understood that people exercised their pets while staying on the park.
12. Mr B Manning, a former guest and part-time employee, bought his pitch in 2007 and was a frequent visitor and used the appeal site for picnic, leisure and fun with kids.
13. Mr T Maloney, a tenant and caravan owner since 2008, used the appeal site for dog walking, and walks his daughter's dog about 6 weeks a year.
14. Mr R Trangmar is a seasonal pitch owner and his first holiday at the site was in 2009. He states that he uses the Holiday Park a couple of times a year and the appeal site on each visit for camping, dog walking and recreation.
15. The Council contends that the statutory declarations are vague and do not have specifically defined periods of use, and that the use of the field for dog for walking and picnics are brief and transitory with no facilities on site to facilitate any leisure activity. In the context of the 10 year period, the Council says that the claimed uses are de minimis or could have come within the ambit of the permitted development right for the temporary use of open land for up to a 28 days per annum.

16. Whilst the evidence provided in the statutory declarations does indicate the occasional use of the field for dog walking or other leisure purposes, this does not indicate that this use was anything but casual and intermittent which was no more than de minimis. I attach less weight to the declaration by Aiden Jones due to it being submitted on behalf of his mother and to the conflict of dates with other evidence.
17. Reference is made to aerial photos of the site for 2006, 2009, 2017, 2019, 2020 and 2021. These show the appeal site becoming overgrown with vegetation over time. Google Streetview images between 2008 and 2016 confirm the gradual neglect of the field. The 2008 photo shows cattle in the field which is contrary to Aiden Jones statutory declaration that the land has not been grazed since 2005/2006.
18. The basic approach for a material change of use to have occurred, is that there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. Many fields are used for dog walking and occasional leisure activities but such uses do not change the character of the field to something tangibly different in land use terms.
19. I note that a site plan shown on the Trekenning Tourist Park web site indicates a route to 'to the dog walking field'. Whilst this gives some support to the appellants' case, the date of the plan is not shown and it refers only to dog walking and not to other more general leisure activities.
20. Established case law indicates that a dormant use could be an existing use for the purposes of s191(1) if that use had not been lost by abandonment, by the formation of a new planning unit or by a material change of use.¹ The appellants' claim that the former lawful agricultural use has been lost through a material change of use to a leisure use has not been demonstrated and there is nothing to prevent the appeal site being used for agriculture at any time.
21. Case law also established that in calculating the 10 year period no account could be taken of any time when the Council could not have taken enforcement action, for instance because no breach was occurring, that period does not count towards the 10 year period. The breach must have been continuous during the immunity period².
22. The appellants attach weight to the fact that the signs on the appeal site located near the roundabout refer to the Trekenning Tourist Park and that this should have been sufficient to indicate to the Council what use was occurring, for which enforcement action could have been taken. However, such an argument carries no weight as the existence of a sign on land, or the fact that the sign is time expired, does not convey any rights or uses over the appeal site. Indeed advance signs of commercial uses are far from unusual in the countryside.
23. The appellants make a tenuous claim that in a 2005 application 'To use unused existing land for 28 holiday caravan homes' on the Trekenning Tourist Park supports their appeal in that the Council must have realised that the dog walking use that had occurred there would be displaced elsewhere as a result. I note that the application form confirms the land was not being used but that

¹ Panton and Farmer v SSETR & Vale of White Horse DC [1999] JPL 461

² Thurrock BC v SSETR [2001] JPL 1388 and OCADO Retail Ltd v Islington LBC [2021] EWHC 1509 (Admin)

the last use had been dog walking and playfield. However, this claim does not add weight in the appeal.

24. Reference is made to the case of Hedges³ in respect of an inspector having regard to factors other than actual use in reaching a decision. The appellants consider that the Council could have taken enforcement action based on the advertisement of the availability of the use combined with the physical use of the land demonstrates the intention/ability of use. However, taking enforcement action against an intermittent breach of dog walking or other occasional leisure activities can be difficult where there are no physical changes to the appearance of the land such as through the provision of facilities. In any event the appellants have not provided evidence of the frequency or duration of these activities for me to reach a decision on the balance of probabilities that a material change of use has occurred.
25. The submitted evidence is not sufficiently precise or unambiguous to demonstrate that a material change of use to a leisure use has occurred and been continuous for a period of 10 years or more.

Conclusion

26. 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 change of use of land from equestrian/agricultural to leisure for Trekkenning Tourist Park (Caravan Site) for as continuous period of no less than 10 years prior to the application 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.

P N Jarratt

INSPECTOR

³ Hedges v SSHCLG & Another [2021] EWHC (Admin)