



Appeal Decision

Site visit made on 20 April 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23RD JUNE 2023

Appeal Ref: APP/P1940/X/21/3286818

**Land at Long Pightle Mobile Home Park, Chandlers Lane, Chandlers Cross
WD3 4NE**

- 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 Charles Webb against the decision of Three Rivers District Council.
 - The application ref 19/2121/CLED, dated 31 October 2019, was refused by notice dated 2 March 2020.
 - 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 use of land as amenity space provision in connection with mobile home park.
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Preliminary Matters

1. The description used in the LDC form is vague and provides insufficient clarity with regard to the use of the land for which the LDC is sought. The description of the development used in the header above has been taken from the decision notice. I note that this is a description used by the appellant in the appeal form.
2. Notwithstanding this, in his evidence the appellant describes a recreational use, as well as the use of the area of the site in question for the storage of items and the stationing of caravans, a container, shed and trailer. I will, therefore, consider this more comprehensive use of the appeal site suggested by the appellant in my decision.

Main Issue

3. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue in this case is whether the Council's decision to refuse to grant a LDC was well founded.
4. The test of the evidence is the balance of probability and the burden of proof is on the appellant. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to

refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Background and Main Considerations

5. The appeal site is a linear site occupied by a number of large static residential units on an enclosed site known as Long Pightle Mobile Home Park (LPMHP). Although not specifically identified on the site location plan, the land that is referred to in the appellant's evidence is a parcel to the rear of the mobile home park, occupying the easternmost part of the site outlined in red on the site location plan. This is to the east of both unit No 15 and the parking area highlighted in darker green on the site plan. From here on in I will refer to this part of the appeal site as "the Land".
6. The appellant's case is that the Land is used as amenity space and for storage associated with LPMHP. The claim is, therefore, that the use of the Land is incidental to LPMHP and that such a use is lawful.
7. The first matter in dispute between the parties is whether or not the use of the Land for which the LDC is sought has the benefit of planning permission. This is a discreet matter that I will consider first. If I conclude that it does not have permission, I will then move on to consider the matter of the relevant planning unit/units and its/their use. In such cases it is important to clarify this, before moving on to consider whether or not the use of the Land for which a LDC is sought has been continuous for a period of 10 years beginning with the date (i.e. commencement) of the breach.

Reasons

Is the use of the Land permitted?

8. The Council say that the earliest planning records they have for the site is the permission, reference W/1777/64, for 14 caravans. It says that this permitted the use of the main LPMHP site, but not the Land to the east. Although I have not been provided with the details of this permission, I note that the appellant does not dispute this. Accordingly, it is more likely than not that the original permission for the site did not include the use of the Land in question.
9. The two permissions referred to by the appellant are those referenced 94/0942/8 and 96/0906/8. The first granted permission for the relocation of mobile home No 1 and the provision of 5 additional parking spaces. A plan and the decision notice have been brought to my attention. The second I am told granted permission for the erection of a building for use as an office and the siting of 1 additional mobile home. I have been provided with a plan relevant to this permission, but not the decision notice or any other details.
10. I acknowledge that the 94 permission was accompanied by plans showing a site that included the Land subject of this appeal. I also acknowledge that the decision notice informs that the development proposed in the application and shown on the plan is permitted. However, the description of the development permitted does not include the material change of use of the Land. Neither does it specifically refer to the Land in question. Furthermore, the description of development is clear, such that I do not consider there to be any ambiguity in what is permitted.

11. As for the 96 permission, the appellant acknowledges that there is no express approval given in this for the change of use. Indeed, I have no reason to conclude that the description of the development permitted, as given by the Council, is unclear in any way. That the Land is identified on the 96 permission plan as 'existing grass and woodland' is not sufficient for me to conclude that this use of the Land that is the subject of this appeal was permitted.
12. All things considered, it has not been demonstrated that the use of the Land as suggested by the appellant for amenity space provision or for storage in connection with LPMHP has the benefit of planning permission or is otherwise permitted.

The Planning Unit

13. As I note above, it is necessary to consider the planning unit or units and the use or uses of them. The settled caselaw of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207 assists in the determination of the planning unit. In that case it was held that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. The case confirms that the concept of physical and functional separation is key.
14. With regard to the appeal site's occupation, whilst such mobile home parks often have multiple users, the appellant says that the Land is contained within the same HM Land Registry title as LPMHP. Indeed, such sites are often owned and managed by a single party. The Council does not dispute this, neither does it suggest that the ownership of the Land has changed since it was registered with HM land registry, such that it is in different ownership to the rest of the appeal site.
15. As for the activities that take place within the appeal site, there is no dispute that the primary use of the appeal site is a residential use, facilitated by the stationing of caravans used for the purposes of human habitation. There are two car parking areas within the site. There is no dispute that these are used in association with the mobile home park and are, therefore, incidental to the primary use.
16. As for the Land itself, at the site visit I noted the shrubs, mature trees and other vegetation along the northern and southern boundary. I also noted the central area of the Land is laid to grass. On this area I noted some benches. The informal landscaping of the site, the grassed area and the picnic benches give the Land the appearance of an area of informal recreational space.
17. In addition to the above, I also saw a boat and a corrugated shed, along with a number of mobile caravans and a campervan on the Land. These had the appearance of being stored, rather than being occupied.
18. The westernmost boundary of the Land is marked in part with a low timber fence that encloses the mobile home that adjoins the Land (No 15). There are two sections of established evergreen hedge along this boundary. Otherwise, the Land was open to the adjoining parking area and the remainder of the site. Access to the remainder of the site from the Land was via a wide gap between the two sections of evergreen hedge.

19. The Land is also open to, and enclosed with, land further to the east of the site, identified in blue on the LDC site location plan. There was no feature that formed a discernible boundary between this eastern area and the Land. Furthermore, other than the gap in the hedge, referred to above, I noted no other means of access to the Land and the adjoining parcel to the east.
20. Having regard to the above, I am satisfied that the appeal site and the land to the east has a layout consistent with a single planning unit. I have seen reference to a gate across the gap that provides the means of entering the Land, although it was said that there was still a gap to the side of the gate to provide pedestrian access. I am also not aware of any other means of access to the Land, other than through the remainder of the LPMHP site.
21. Turning to the functional relationship between the Land and the remainder of the appeal site, I have had regard to the evidence submitted by the parties in this regard. From the appellant this includes site and aerial photographs, as well as statements and statutory declarations from local residents, residents of the LPMHP, the appellant and a person who collects refuse from the site.
22. In addition to the Council's comments on the appellant's evidence, it has also provided the response to its consultation exercise undertaken during the determination of the LDC application subject of this appeal and a previous LDC application. The Council canvassed the comments of some of the residents of White Shack Lane and LPMHP.
23. The appellant claims that residents of LPMHP use the Land for purposes including walking dogs, outside play, and garden parties. This is referred to by the appellant in evidence as a recreational use. The appellant also suggests in evidence that the Land is used for the storage of maintenance items and the stationing of caravans, a container, shed and trailer.
24. Although the appellant does not specify the number of caravans stored on the site, the aerial photographs show what appear to be two mobile homes on the site. This is consistent with my observations on site of the number of caravans, their location adjacent to the corrugated shed, and that one was covered in a green tarpaulin as seen in some of the appellant's photographs. Some parties have referred to the storage on the Land of the mobile homes of residents of the LPMHP, including park residents and residents of White Shack Lane who responded to the Council's consultation exercise.
25. Notwithstanding the above, whilst there is some evidence of the storage use of the Land being associated with the maintenance of the LPMHP site, there is little evidence to support the appellant's suggestion that there has been a container on the site. I observed a corrugated shed building on site; this is consistent with some of the appellant's photographs of the site. I have also had regard to the evidence of this being used for storage in association with LPMHP.
26. Importantly, there is no suggestion in the evidence from either party that the storage use of the Land is for purposes other than in association with LPMHP. Indeed, the evidence points to the storage use either being for the maintenance of the appeal site or the storage of residents' items. This adds weight to the appellant's claim of the functional connection between the use of the Land and the remainder of the appeal site.

27. Turning to the suggested recreational use of the Land, there is some conflict in the evidence. The appellant has provided a number of statutory declarations from individuals who are visitors to the site, or have observed the Land from their adjoining properties. The appellant has also provided letters from two of LPMHP residents. The declarations and the letters are consistent with regard to the accounts of the use of the Land for recreational purposes. This includes for children playing, for sitting out, and for dog walking. I find this evidence to be corroborative of the appellant's claim, and demonstrates some form of recreational use of the Land by residents of LPMHP.
28. I note the Council's comments with regard to this evidence. However, much of this goes to the reliability of the evidence in demonstrating that the use of the land has been continuous for the requisite period.
29. Of the four residents of LPMHP who responded to the Council's consultation exercise, two refer to an occasional use of the Land as amenity space, whilst another says that they cannot see the Land from their mobile home on the site. Indeed, the linear nature of the site is such that views of the Land from mobile homes within the site are only likely from those close to it.
30. Although the evidence of some of the residents of White Shack Lane refer to a storage use consistent with that described above, they say that they have not observed the land being used as an amenity area. I understand from the evidence that views into the site from White Shack Lane have been limited to a gap or gaps in the fence. I also note the vegetation along the boundary of the Land with the Lane is mature and dense. None suggest that they are visitors to the site and that they observe the Land from within the site.
31. The Council suggest that the lawful use of the land is for agriculture. However, none of those canvassed by the Council referred to any active agricultural use of the Land, such as the keeping of animals or the growing of any crops. The Council also use the phrase 'open grassland', whilst one resident describes the Land as an empty field. Such observations are not, in my judgement, inconsistent with the appearance of land used for informal recreation.
32. Bringing all of the above together, I have had regard to the layout of the site, including the Land and remainder of the appeal site. I note the evidence from both parties which refers to a storage use of the Land in association with LPMHP. Whilst I note the evidence of some individuals who say that the Land is not amenity land, balanced against this are the detailed accounts of those who use the Land for recreational purposes, or who have observed it being used for these purposes at close quarters. Some of these accounts have been provided in the form of a statutory declaration. I am mindful of the significant weight that is carried by evidence provided in statutory declarations, in view of the sanctions that could be imposed should these contain false or misleading evidence.
33. Accordingly, I find as a matter of fact and degree, that the Land has a physical relationship with the remainder of LPMHP, and that it is more likely than not used in a way that is functionally connected to the mobile home park. Whilst the primary use of the appeal site as a whole is as a mobile home park, the Land in question is, in my judgement, part and parcel of that use and is used for the storage of two caravans, for the storage of maintenance items and for recreational purposes, all of which is incidental to the primary use of LPMHP as a mobile home park.

Continuity of the Use

34. The Council suggest that the lawful use of the appeal site is for agriculture and that this was a use of the Land that was separate to the LPMHP site. I have, however, concluded above that the Land and the remainder of LPMHP are now within the same planning unit. The use of the Land is for the storage of two caravans, for the storage of maintenance items and for recreational purposes, which I have concluded is incidental to the primary use of LPMHP as a mobile home park. The character of such a use of the Land is, in my judgement, materially different to that of a use for agriculture. Accordingly, there has, at some time, been a material change of use of the Land to its current use.
35. In considering the lawfulness of a use, the period considered need not be the 10 years (or 4 years in some cases) directly prior to the relevant date, which in this case is the date the LDC application was made. Evidence demonstrating the continuity of a use over any 10 year period following the date of the breach can be relied upon to demonstrate the lawfulness of that use.
36. I turn first to the statutory declarations of the residents of the adjoining properties at The Old Bungalow and Popes Croft. These neighbours say that they have lived adjoining the site for some 13 and 15 years respectively. Miss Hicks says that on a weekly basis she has observed the uses described by the appellant, including the storage use, children playing and social occasions. She says that she has observed dog walking on the site on a daily basis, adding that she has also used the land for these purposes.
37. Although her use of the land as a non-resident of the mobile home park is not consistent with the incidental nature of the use claimed by the appellant, this demonstrates that she has observed the uses of the Land claimed by the appellant at close quarters (i.e. from within the site).
38. Whilst the Council suggest that there is a lack of a direct means of access to the site from Popes Croft, this property directly adjoins the land to the east of the appeal site, which is also in the appellant's control. Direct access between these two properties may well have been informal. Nevertheless, I have no reason to doubt what Miss Hicks says, particularly as her account of weekly observations of the uses claimed is consistent with the declaration of Mr Francis.
39. The Council suggest that I attach little weight to this evidence, suggesting that views of the Land from these adjoining properties and their access lane is limited. However, the observations of these witnesses, particularly from the adjoining lane, are from vantage points comparable to those of the residents of White Shack Lane. Furthermore, I have no reason to doubt the frequency of Mr Francis and Miss Hicks' use of the lane on foot for dog walking.
40. In his statutory declaration, the appellant describes his recollection of the historic use of the Land when visiting relatives who lived at the mobile home at No 15 on the site. He described regularly playing on the Land from the 1990s, after which his family acquired and began to run LPMHP. He recalls helping his father maintain the land. He also says that for most of his life he has recalled residents of the park using the Land.
41. The final statutory declaration is from Mr Parrot who says he has collected waste from the site for the past 14 years. He refers to the Land as an area of

mown grass and calls this the recreational area on which he has observed residents walking their dogs and playing with children. He also refers to the use of the land by residents for the storage of caravans and motorcycles. I have had regard to the correction to his declaration, in which Mr Parrott clarifies how he has driven into the site over the years.

42. The Council again suggest that I attribute little weight to this evidence, referring to the time of day and length of time of Mr Parrot's visits. However, Mr Parrot's visits to the site are frequent, and there has been no change to his evidence with regard to his observations on how the Land is used. Although his visits to the site may be short and early in the morning, dog walkers are often out at this time of the day. Furthermore, his observations of the storage use of the Land would not be dependent on the time of day of his visits to the sites. There is, therefore, little ambiguity in his evidence with regard to how he has observed the Land being used during his short, but frequent visits to the site.
43. In addition to the above, the appellant has provided letters from two of the residents of LPMHP, one of which (Mr Busby) has resided at the park for 15 years. The evidence of these parties is consistent with, and corroborates that given in the statutory declarations, referred to above. The residents describe how they have used the land themselves. In particular, Mr Busby refers to his direct views of the site from his home at No 15 (which directly adjoins the Land) and how he has seen other residents using the Land for both a recreational use and for storage.
44. I note that the Council refer to other evidence submitted with previous LDC applications. This has not, however, been provided by the appellant. Nevertheless, whilst I note the weight the Council suggest this should be afforded, there is no suggestion that this additional evidence contradicts or makes the appellant's versions of events in this appeal less than probable.
45. Notwithstanding the above, I have already referred to the Council's evidence from residents of White Shack Lane and LPMHP itself. I have noted that two residents of LPMHP refer to an occasional use of the land as amenity space, whilst another says that they cannot see the Land from their mobile home.
46. I do not disregard the evidence of the fourth LPMHP resident and the residents of White Shack Lane. In particular, I note that these residents have resided in their properties for in excess of 10 years. I also acknowledge that this evidence contradicts to a degree the evidence of the appellant and his other witnesses with regard to the suggested 'amenity' use of the Land. I must, however, strike a balance with this competing evidence. In this case I conclude that the balance tips in favour of allowing the appeal.
47. For the reasons already given, I attribute significant weight to the evidence provided in the statutory declarations. The declarations are detailed in their content and most refer to the frequent use of the land for the purposes claimed for a period in excess of 10 years prior to the submission of the LDC application. These declarations are precise and unambiguous, they are consistent with each other, and are corroborated by additional statements of others who reside at the site and use the Land for the purposes claimed.
48. I am satisfied that the appellant has discharged the burden of proof that is upon him. I cannot be satisfied that the evidence relied on by the Council is

sufficient to make the appellant's version of events less than probable. Having regard to all evidence submitted, I conclude that, on the balance of probability, the use of the Land for the storage of two caravans, for the storage of maintenance items and for recreational purposes, all of which is incidental to the primary use of the appeal site as a mobile home park, has taken place substantially uninterrupted for a period of ten years or more. Accordingly, I conclude that the use of the Land was lawful on the date the LDC application was made.

Conclusions

49. 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 in respect of the use of land as amenity space provision in connection with the mobile home park 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.

Formal Decision

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

J Moss

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 31 October 2019 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the use of the land coloured in solid blue and labelled "Land" on the attached plan for the storage of two caravans, for the storage of maintenance items and for recreational purposes, all of which is incidental to primary use of the site as a mobile home park, has taken place substantially uninterrupted for a period of ten years or more.

Signed

J Moss
Inspector

Date: 23RD JUNE 2023

Reference: APP/P1940/X/21/3286818

First Schedule

The use of the land coloured in solid blue and labelled "Land" on the attached plan for the storage of two caravans, for the storage of maintenance items and for recreational purposes, all of which is incidental to primary use of the remainder of the land outlined in red on the attached plan as a mobile home park.

Second Schedule

Land at Long Pightle Mobile Home Park, Chandlers Lane, Chandlers Cross, coloured in solid blue and labelled "Land" on the attached plan.

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land or buildings specified in the Second Schedule and identified on the attached plan. Any use 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 23RD JUNE 2023

by J Moss BSc (Hons) DipTP MRTPI

Land at Long Pightle Mobile Home Park, Chandlers Lane, Chandlers Cross

Appeal ref: APP/P1940/X/21/3286818

Scale: Not to scale



