
Appeal Decision

Inquiry Held on 24 October 2022

Site visit made on 25 October 2022

by Roy Curnow MA BSc(Hons) DipTP MRTPI

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

Decision date 06 September 2023

Appeal Ref: APP/J9497/X/21/3270206

Land adjacent to Holy Brook, Buckfast

- 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 Mr Brad Richecouer of Holy Brook Meadows CIC against the decision of Dartmoor National Park Authority.
 - The application Ref 0153/19, dated 1 April 2019, was refused by notice dated 28 June 2019.
 - 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 Use of site for seasonal camp events for up to 50 days per annum during July, August and September and for agriculture for the remaining time.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by Holy Brook Meadows CIC (the Appellant) against Dartmoor National Park Authority ('NPA'). This application is the subject of a separate Decision.

Procedural Matters

3. After consultation with, and agreement from, the parties, I visited the site before the Inquiry. This gave me an opportunity to see the site and understand its layout prior to hearing the cases. I was accompanied by representatives of both parties, but the Inquiry was not opened at that time. There were no discussions of the merits of the parties' cases at the site visit. It was agreed in the Inquiry that there was no need to re-visit the site.

Reasons

4. The Main Issue is whether the NPA's decision to refuse to issue a certificate of lawfulness was well-founded. This turns on whether, on the balance of probability, the Appellant is able to show that the use of the land described in the application has been undertaken continuously for 10 years and, if this is the case, that this had not thereafter been lost. The onus is on the Appellant to make his case on the balance of probabilities. Established case law sets out

that should the NPA not have any evidence of its own to contradict what is claimed, the Appellant's evidence needs to be precise and unambiguous.

The site and relevant planning history

5. The land lies to the northwest of Buckfast. It is linear in plan form, lying at the bottom of a valley through which the Holy Brook runs. A gate at its eastern end gives access to the land from a minor road. Running west into the site from there, the land is initially fairly narrow. It is bounded by Hembury Woods to the north and Holy Brook to the south. Further west, the land broadens north to south and includes land on the south side of the Brook. The land to the south of the Brook is, in parts, quite wet close to the stream. With the rise in the land away from the stream, so the land dries.
6. The application for a certificate of lawfulness was refused for the following reason. 'The Authority has not been provided with sufficient clear and precise information in writing to show that on the balance of probabilities the land has been used for two physically and functionally separate uses of seasonal camps and agriculture for a continuous period of 10 years prior to the date of submission of the application'.
7. This was the second application for a certificate of lawfulness on the land. In the first, (NPA reference 0288/17), the NPA refused to issue a certificate for the change of use of the land from agriculture to a mixed use of agriculture and summer camps associated with Qigong Southwest.
8. Prior to this, an application (NPA reference 0422/15) was made for planning permission to change the use of agricultural land to part recreational, with erection of barn for mixed use and retention of access track and associated drainage channel. This application was withdrawn by the applicant. That application arose, at least in part, from an enforcement investigation by the NPA into the creation of a track and digging of trenches on the land. Two earlier investigations into the use of the land for camping purposes were opened in 2002 and 2005. From this, it is clear that the NPA had been aware of camping activities on the land for a considerable period of time.

Planning unit

9. The start point of my assessment is to identify the relevant planning unit. Established case law¹ sets out that 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. In its Opening Statement, the Council agreed that the planning unit accorded with the plan attached to the statutory declarations ('SD') produced by Messrs Brad Richecouer and Daverick Leggett. Although a small part of the red line delineating the land on those plans was obscured by a text box, it is clear to me that this is the same land for which the certificate was sought. Following the principles in *Burdle*, I also find that this represents the correct planning unit.

The claimed use

10. In brief, the Appellant's case is that the land has been used for the purposes claimed since 2001. However, as it states, it is only necessary to make the

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

case for 10 years continuously. Should that be demonstrated for any period during the period between 2001 and 1 April 2019, the date of the application, and not thereafter lost, the use would be lawful.

11. The application form describes what one might call the 'camping element' of the claimed mixed use as a "site for seasonal camp events". In section 4 of the application form it is asserted that this use falls within Class D2 'Assembly and Leisure' of the Town and Country Planning (Use Classes) Order 1987, as amended. Class D2 gives a list of uses that would fall within that Class. Of these, the assertion that the use fell within Class D2 could only be reliant on that part of Class D2(e) that reads "area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms".
12. I find that the use to which the land has been put to does not sit comfortably within Class D2(e), given its camping element. It is not what might be termed a 'traditional' camp site and it does not reflect that part of Class D2(e) that I refer to above. I find it to be a sui generis use; though, to a degree, this is academic as the use class is not used in the description of development.

Extent of the camping use

13. It is the Appellant company's contention that the use has occurred across the whole of the land identified in the red line plan. The NPA's position is that it was confined to the area to the north of the Brook and that, at most, activities to its south were *de minimis*.
14. I saw that the part of the site close to the Brook, on its south side, is rough and boggy land. This is roughly in the position shown in Appendix 14 to the NPA's case. The Appellant company acknowledged that the boggy ground restricts the manner in which it is used during the camps. However, the evidence shows that yurts were erected on land to the south of the Brook, one of which was of considerable size, and that these were used for communal activities. An aerial photograph² of the site in 2015 shows these. A communal sauna was also erected on that land.
15. The photograph also shows 'paths' that were worn across this part of the site. In the main, these emanate from the footbridge over the Brook from the land to the north where camping and other activities take place. The photograph shows how the boggy area affects the 'desire lines' of these paths, as they curve around it before straightening towards the yurts. Whilst the paths show the parts of the land to the south of the Brook that were most used by people, that does not indicate that other areas were not in use.
16. I find the evidence that the boggy area was mostly used by the up to 40 children attending the camps, as they did not mind getting muddy, to be credible. Although the numbers of children on the site decreased during setting up and striking camp, I find it likely that they would similarly use this area by the stream. Other areas south of the Brook were used for a mixture of formal and informal activities, including walks where people might get away from the relatively crowded area north of the Brook.
17. Whilst it would not be necessary for every square metre of the land to be used at each camp, and this may not have been the case, I find that the level of use

² Figure 1 Appellant's Appeal Statement of Case – August 2021

exceeded a *de minimis* level and was actually an important element of the use of the land for seasonal camp events.

18. As the judgement in *R (Flint and Another) v South Gloucestershire Council* [2016] EWHC 2180 sets out, the extent of the use of land in certificate cases is a matter of fact and degree and will depend on the evidence presented in each one. Here, I find that the seasonal camp events have occurred across the whole of the land.
19. The Brook does not provide a significant degree of physical separation between the land to its north and south. It is not wide, and a simple short bridge crosses it. I find that there are not two or more physically separate areas of land and, functionally, that the entirety of the land is used for the camp events.

Whether a single mixed use or two separate uses?

20. In order to assess whether the land was put to a single, seasonal mixed use, as proposed by the Appellants, or whether there were material changes of use ('mcu') each time the camping ceased and agriculture recommenced and vice versa, one needs to pay heed to the Court of Appeal decision in *Webber v Minister of Housing and Local Government* [1968] 1 WLR29.
21. Although the NPA did not make the case in its decision on the certificate application 0288/17, that the uses on the land overlapped in terms of space and time, it does so in this appeal. I do not agree with its position that, as hay is a summer crop and the grass that forms the hay would have grown when the themed camps took place, so the uses overlapped negating the claimed mixed use. I find that grass growing during the camps cannot be held to be an agricultural crop, unless it were to be cut for hay during a camp. The evidence points to this not being the case. That agricultural activity took place outside the time of the camping activity, and is quite separate to it.
22. Whilst looking at agricultural matters, I shall address the doubts that the NPA had as to whether the land could have been used for the grazing of sheep when not being used for camping. In this regard, it drew my attention to photographs 26-28 in its Appendix 1. These show gaps in the northern boundary hedge through which, it says, sheep could easily pass, thus undermining the Appellant's claim that the land has been used for this purpose.
23. Mr Hodgkiss, an interested party attended and spoke at the Inquiry and pointed out that no agreements for taking the hay crop were produced. Such agreements might have clarified things further, but their omission does not undermine the Appellant's case. Mr Hodgkiss also pointed out that he had not seen any agriculture on the land and also referred to the holes in the hedges. He did have to agree, however, that as he moved to Buckfast in 2020, which was after the date of the application, events from the relevant period were "outside his knowledge".
24. I am assessing the use of the land before and up to the date on which the application was made. The photographs date from March 2022, nearly 3 years after the application was made. I agree that the hedge in the photographs would not contain sheep, but I was not given evidence to show that this was the situation at or before the date of the application. The photographs do not lead me to doubt the use of the land for the grazing of sheep outside its use for camps.

25. The evidence shows that the structures that house the sauna and are used for storing wood and other items associated with the camping use of the land are on the land all year round. The NPA's position in the Inquiry was vague on this; Mrs Williams only went as far in her cross-examination ('XX') to say that they "suggest a material change of use in the land". These are small structures that are not actually used for camping-related purposes during the time that the land is in agricultural use. They are de minimis features that do not lead to a mixed use outside the time when the actual camps are taking place.
26. I have found that the whole of the land was used for the camps and that there was no agricultural use of the land whilst camping was undertaken. They were distinct uses that did not overlap in terms of time or space. The "normal" use, as *Webber* would have it, was seasonal: camping for part of the year and agriculture for the remainder. I have read the Blackpool appeal decision³ put forward by the Council. There, the Inspector was in some doubt as to when one use ceased and the other commenced. I do not have that doubt, and find that the two uses were separate and did not overlap.

Period of use

27. From here, I move on to assess whether the camp use was undertaken for the claimed 50 days for 10 consecutive years.
28. Planning application 0422/15 was made by the Appellant company to the NPA on 17 July 2015 for the 'Change of use of fields from agricultural to part recreation/part agricultural, with erection of barn; (retrospective) construction of access track and drainage channel'. In his Planning Statement in support of the application, Mr Gethin, the agent for the application, set out that the land was used for "two or three camps within the 28-day permitted period" and, in his 'Landscape and Visual Assessment' referred again to the "4-week 'permitted slot'".
29. Those periods relate to the terms of Class B, Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('GPDO'). This allowed for the temporary use of land for any purpose, save for some restricted uses that are not relevant here, for not more than 28 days in total in any calendar year.
30. Further on this matter, an undated letter that I am told dates from 10 February 2015 from Brad Richecouer and Daverick Leggett was sent to members of the public in the area to explain the situation at Holy Brook. This states, without equivocation, that "We currently operate under the provisions of Part 4 Class B of the GPDO". Mr Hodgkiss was of the view that this showed a clear intention on behalf of the Appellant to work under the 28-day rule. However, this appeal seeks to ascertain what actually occurred rather than what the Appellant intended to do.
31. In his XX, Mr Richecouer said that it was clear in their meetings that Mr Gethin was just counting the days when the camps happened and not the periods of setting up and taking down. He said that he was happy with Mr Gethin's work. He did not provide a reason for the references to 28 days' use, other than they had been "misadvised" by Mr Gethin. He could not recall how and when he drew that conclusion. Although he said that he would have told Mr Gethin if the

³ APP/J2373/C/09/2105428

land had been used outside that period, this is not reflected from what Mr Gethin submitted.

32. In his XX, Mr Leggett agreed that he would have read Mr Gethin's documents before they were submitted. He also nodded in answer when it was put to him that if there had been errors, he would have pointed them out to Mr Gethin. He said he had no idea why Mr Gethin had written the submissions in that manner, but apparently did not question what he wrote.
33. A 'To whom it may concern' letter⁴ from Mr Gethin, dated 24 July 2018, was submitted. In this, amongst other things, he says "it is now evident that the presence of facilities and communal tents constructed for these camps had often exceeded this [28-day] period by some days at either end". No explanation as to how this became evident to him was given, and he was not present at the Inquiry to clarify this.
34. I note that the letter uses the word "often". This does not equate to always, nor that the breaching of the 28-day rule occurred in ten consecutive years. My reading of it is that the main thrust of the letter is a rebuttal of the suggestion that there might have been an attempt to conceal a breach of planning control. This is not a point pursued by the NPA in this appeal, and I find that there is no substantive evidence to point to this being the case.
35. Notwithstanding the above, the Appellant's position is that the references to the '28-day rule' in Mr Gethin's 2015 submissions and those in the letter from Messrs Richecouer and Leggett are, in any event, immaterial. This is because the use became lawful in 2011. Had, the Appellant says, the land been used for 28 days on occasion thereafter this would not have been a mcu of the land. That argument is of course reliant on making the case that the required 10-years' use could be shown prior to the 2015 application. In this regard, both Mr Richecouer and Mr Leggett pointed to the evidence in their SDs and those of third parties, which they say demonstrates this.
36. Brad Richecouer and Daverick Leggett spoke to Statutory Declarations (SDs) that they had made. In these, amongst other things, they set out the duration of the seasonal camp events and, by extension, that of the agricultural use; what was on the site for the camp events; and the nature of those camps. The start point is that great weight should be attached to evidence that is given orally and is open to XX.
37. Table 1 attached to the SDs sets out that between 2001 and 2011 the total duration of the camping use was reported to be 50 days, save for 2003 and 2011 when it was 51. Between 2011 and 2018, it was 50 in all years, save for 2015 and 2016 when, again, it was reportedly 51. These figures include the days that it took for the initial setting up of the site for the years' camps and those for striking them at the end of the year.
38. For its part, the NPA was unable to bring forward any evidence of its own to contradict what was claimed. Thus, the test is whether this evidence, which is integral to the Appellant's case, is precise and unambiguous.
39. Evidence was given by Messrs Leggett and Richecouer that the tabulated information was based on contemporaneous records that were kept. I was told

⁴ Appendix 6 Appellant's Statement of Case

that these records variously took the form of a 'database', a list of camps, calendars, year planners and notes.

40. In answer to the suggestion by the Council that there hadn't been a record of the dates and that the figures were designed to add up to 50 days, Mr Richecouer disagreed saying that records had been kept and he described himself as being "a bit OCD" in this regard.
41. I, too, share some of the reservations regarding the uniformity of the total number of days that the camping use of the land took place. For instance, in 2007 it took twice as long to set up the camp as it did in other years and yet the total was still 50 days. To my mind, the argument that this anomaly might have reflected the weather at the time lacked conviction.
42. None of the various methods of recording the dates that the land was being used for seasonal camp events was produced at the Inquiry. Without it my reservations about the duration of the camp events are not assuaged. As such, I cannot be sufficiently sure of its veracity, nor of the accuracy of what Messrs Leggett's and Richecouer's recollections.
43. It would be less than probable to be able to recall the precise dates of the events, including setting up and striking camp, without the sort of records that were mentioned. I find that its absence considerably reduces the weight that I afford to the tabulated information. The Inquiry was told that the information that was available had been collated by a third party. However, no evidence was brought forward from that person that might have shed light on this. Similarly, no financial records, which might have served the same purpose, were produced. The marketing material that was produced illustrated the activities that were timetabled to occur at the camps, but do not show actual days of use.
44. 27 Statutory Declarations were submitted from third parties in support of the application. They are all similar, setting out the camps that their signatories had attended by reference to a Table and a plan showing the land. Given the legal ramifications associated with making a SD, they are to be afforded significant weight when weighing up the evidence, though not as much as when evidence is given orally and is open to XX.
45. The 2017 application for a certificate included a number of SDs, a number of which were submitted by the same people. There were discrepancies in what persons had said in 2017 and 2019, and Mr Leggett acknowledged these. He variously referred to persons having "forgotten that she attended", there were "typos", there was "an error in 2019" or that "2019 is correct and 2017 is incorrect". He also referred to a change in format between 2017 and 2019.
46. The SDs, he said, were chosen from "regular attendees", as shown in a database and emails of everyone that had stayed since 2001. This database, he agreed in XX, showed who stayed and when. It was not, however, submitted to the Inquiry.
47. Mr Leggett agreed in XX that the SDs were a combination of people remembering the dates and being told of them. He said, for the most part, it was their recollections, and that these were "significant events in their lives".
48. The SDs required their signatories to recall very precisely events that had happened up to 18-19 years previously. I find it most unlikely that they would

have had the degree of recall that was claimed and there was scant explanation of how they were able to do so. Furthermore, no-one sets out that these were “significant” moments in their lives, as claimed. There is nothing in the SDs to explain how their signatories can recall the dates in such detail. It seems to me that this would have been, to a substantial degree, a result of information that was given to them. Again, had the various sources of data that the Appellants referred to been submitted, this would likely have been beneficial to the Appellant’s case on this matter.

49. I find that the inconsistencies between the 2017 and 2019 SDs points to the problems inherent in recalling events from what could be many years past. This and the Appellant’s acknowledgement that signatories were given information to compile the SDs significantly undermines the weight that I afford to them.
50. The Appellant asserts that the Council’s position in 2017 was that camps had been held since 2001 and that these had occurred for 49-50 days each year. The Council is not, however, constrained by the position it took in 2017. Its position was based on what was before it at the date of the application and, later, in the Inquiry. Whilst it had no direct evidence of its own on the matter of use, it pointed out that it is for the Appellant to make its case. It then set out why the Appellant’s evidence failed to do so.
51. From the evidence before me, I find that, on the balance of probability, the land had not been used for seasonal camp events for the 50 days, as claimed. I find the evidence given by Messrs Leggett and Richecouer, in association with the letter of clarification from Mr Gethin, shows that it is likely that the duration of the seasonal camp events exceeded 28 days. Mr Hodgkiss suggests 43 days as the likely figure. However, simply finding that the use exceeded 28 days is not sufficient for the purposes of a certificate. Given the ramifications for future development at the site it is vital for all parties that a precise figure is given, as set out in the Government’s Planning Practice Guidance (‘PPG’).
52. The PPG advises that precision in terms of the description in a certificate of lawfulness is vital, so there is no room for doubt about what is lawful at a particular date, as any subsequent change may be assessed against it. The evidence that I have been given does not reach that threshold. As was accepted by the NPA in the Inquiry, if the 50 days claimed is not proven I do have powers to amend the number of days that could be mentioned in the certificate. However, I would need to be sure of a precise figure, on the balance of probability, and I am not sufficiently sure in this regard.

Conclusion

53. It is clear that the camps have been carried out for some considerable time, with the knowledge of the NPA. It is also clear to me that they have been carried out across the whole of the land. The evidence put before me showed that the normal use of the site as a seasonal camp during summer months and agriculture for the remainder of the year did occur, with no overlap. However, the Appellant, on whom the burden lies to make the case, was unable to show on the balance of probability that the land was so used for 50 days for the required ten-year period. The evidence that was put forward in this respect lacked the necessary precision.

54. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Use of site for seasonal camp events for up to 50 days per annum during July, August and September and for agriculture for the remaining time 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.

Roy Curnow

Inspector

FOR THE APPELLANT

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DOCUMENTS

Opening statements – both parties

Statement of Common Ground

Table showing Mr Hodgkiss's suggested period of use

R (Flint and Another) v South Gloucestershire Council [2016] EWHC 2180

Closing statement – Mr Tilney