



Appeal Decision

Hearing Held on 16 November 2023

Site visit made on 16 November 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2023

Appeal Ref: APP/U2235/X/22/3300066

**Little Venice Country Park and Marina, Hampstead Lane, Yalding, Kent
ME18 6HH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the 1990 Act) 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 Albert Lee of Little Venice Caravan Park and Marina against the decision of Maidstone Borough Council.
 - The application, Ref 22/500517/LAWPRO, dated 2 February 2022, was refused by notice dated 25 April 2022.
 - 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 the proposed stationing of 10 caravans for holiday use.
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Decision

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

Application for Costs

2. The appellant has made an application for costs against the Council. This will be the subject of a separate decision.

Procedural Matters

3. Both parties refer to the planning history of the site. I therefore asked to be provided with a copy of various¹ decision letters and approved site location plans before the opening of the Hearing. This was to better understand the planning history of the site.
4. The Council highlight a new point made by the appellant in their Statement of Case, namely that “no works requiring planning permission are required to allow the siting” of the caravans. I have taken it into account in my determination of the appeal because if only evidence from the time of the application was to be considered as part of the appeal, it denies the purpose of the LDC procedure. This is to arrive at an objective decision based on the best facts and evidence available at the time the decision is taken. In any event, it would always be open to the applicant to re-apply and it would serve no useful purpose to refuse an LDC on the basis only of the evidence submitted with the

¹ References: 57/0003/MK3, 62/0353/MK3, 66/0019/MK3, MA/91/1049, MA/92/0156 and MA/12/0509

application, if subsequent evidence had come to light proving the case on the balance of probability.

5. The appellant confirmed that the name of his company is Little Venice Country Park (LVCP) not Little Venice Caravan Park and Marina as stated on the application form. The address of the site though is Little Venice Country Park and Marina.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development for the proposal was well-founded.

Reasons

7. The appeal relates to what has become a long established static caravan park with a marina and riverside moorings situated on land between a canal and the River Medway. Access is from the east side of Hampstead Lane. Within the site, caravans are laid out either side of an access road which leads to a small marina and development is generally confined to the northern part of the land in the appellant's ownership. To the south of this area the land is open and comprises a field, known as the "southern" field. This is subdivided with alpacas kept in one portion. A new access is in the process of being laid out into the field from Hampstead Lane. The red line of the LDC application site delineates a rectangular area, which is part of the southern field immediately adjacent to the caravans, away from the road and the alpacas.

The planning unit and the planning history of the site

8. The appellant disputes that the development would amount to a material change of use and as such it is necessary to ascertain the correct planning unit and the present and previous primary uses of that unit. The leading case on the subject is *Burdle*² and the tests within it start with the unit of occupation and turn on the concept of physical and functional separation.
9. The area to be looked at is the whole of that used for a particular purpose. The Courts have held that the area covered by a planning permission is not necessarily determinative of the planning unit but it is likely to be relevant and is a good starting point. As such, I shall begin there.

The 1957 permission

10. Planning permission was granted on appeal in 1957 for a proposed caravan site subject to various conditions, including that the total number of caravans stationed on the site should not exceed 10 and occupation should be limited to the period between 1 March and 31 October each year. Furthermore, the use should be discontinued after five years.
11. The site shown on the plan refused by the Council is a rectangular parcel of land, approximately 1.9 acres in area, with the short side immediately adjacent to Hampstead Lane. The Minister's decision letter though refers to a change in this plan (paragraph 3) and that it was the appellant's intention to site 10 caravans over the 14 acres of orchard land owned by him.

² *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

12. Unfortunately, the Council do not appear to have kept a copy of the plan considered by the Inspector. However, the Inspector describes the site as bounded by hop fields to the south, the River Medway to the east, Hampstead Lane to the west and a playing field to the north. The Council's 1960 aerial photograph appears to show most of the southern field as being used for hop growing, which supports part of this description.
13. However, the Inspector's report on the next appeal in 1962 concluded that the 1957 planning permission for 10 caravans to be sited on 14 acres appeared to include land forming the short side of what I shall describe as an L shape. The question he was therefore asked to resolve was not so much the suitability of the short side of the L shape for 28 caravans but, whether or not, more than 10 caravans could possibly be accommodated over the whole L shape (the 14 acres).
14. Therefore, having regard to the 1962 Inspector's report, it appears the 1957 Inspector was considering an L shaped parcel of land extending between Hampstead Lane and the River Medway but excluding the yet to be built small marina area, when the appeal was allowed.

The 1962 permission

15. In 1962 planning permission was granted on appeal to site 28 caravans for holiday use. The site plan showed them laid out on land forming the short section of the L shape. Conditions imposed limited the number of caravans to 28 for use between 1 March and 31 October.
16. What appears to be the approved layout plan accompanying the appeal shows the portion of land nearest Hampstead Lane as still containing an old orchard, which screened the parcel of land behind it (the middle of the site) which is shown as being used for the stationing of 10 caravans.

The 1966 permission

17. In 1966 planning permission was granted for what is described as "an extension of existing caravan site (approximately 13 acres)". It is not clear whether "extension" meant either additional land to site further caravans or an extension of the existing time-limited use given in 1957. It could also mean simply an application to site more caravans within the L shape. The first explanation is doubtful as the same L shape and size is shown on the plans as previously and the second option is possible as the 1957 permission would have expired. However, mindful how other proposals have been described in the history of the site, it is more likely than not that the proposal is to site more caravans within the L shape. Regardless of these scenarios, the L shape minus the yet to be built small marina has no clear red line or solid black line outlining the site.
18. Nevertheless, the following points support my conclusion. The conditions limit the time of year when the caravans could be used but condition (v) requires a tree planting scheme for the boundaries of the site to be submitted and approved "*before the additional use of the site is commenced*" (my emphasis).
19. In addition, the plans accompanying the decision show caravans laid out in the old orchard area at the front of the site and proposed additional tree planting bordering the location of the 10 caravan's area (the middle of the site) and the 28 caravan's area (short side of the L shape). As such, it appears the planning

permission was for an extension of the use within the L shape, namely the siting of caravans within the old orchard. There was no limit on the number of caravans that could be sited on the land and the use was not temporary.

The 1991 permission

20. In 1991 planning permission was granted to vary condition 1 attached to the 1966 planning permission to permit the occupation of caravans between 1 November and the last day of February the following year. This was subject to two conditions, namely that there should be no permanent occupation of any caravan and that between 1 November and 28/29 February, occupation should not exceed 28 days. These conditions were replicated in a section 106 agreement (S106A) accompanying the application. The approved plan showed the L shape site but excluded the now built marina area.

The 1992 permission

21. In 1992 planning permission was granted on appeal for a slightly different wording of condition 2 attached to the 1991 planning permission, to reflect the wording in the S106A. The new condition still stated no caravan shall be occupied other than for holiday accommodation or for more than 28 consecutive days between 1 November and 28/29 February the following year. The approved plan delineates the L shape but excludes the small marina. The inspector visited the site and stated, "the caravan park contains 120 static caravans".

The 2012 permission

22. In 2012 planning permission was granted for a porch extension to the reception building at the front of the caravan site. The location plan accompanying the application showed a red line around the caravan site, the small marina and the southern field.

Other decisions

23. Other applications were also listed by the Council in their planning history of the site such as the 1972 approval for the construction of the small marina. However, I have also had regard to the site licences³ provided by the parties as these state the planning reference numbers (the permissions) on which the licence for 120 caravans is based.
24. Four permissions are listed but only one is found in the Council's planning history set out in their Statement of Case, namely the 1974 permission for the stationing of 1 caravan for staff accommodation. As the site licences are issued for 120 caravans, it is therefore unclear how this figure became the established figure. The licences also vary in the area of land shown to be covered by the licence with some including the small marina, some not and some extending the small leg of the L shape.

Analysis

25. Overall, the planning history and site licences provide a limited and sometimes confusing narrative to explain the existing development. What is clear to me though is that the unit of occupation is the land used as a caravan park, marina and riverside moorings. It appears it has always been in one ownership since it

³ These are dated 2006, 2012, 2018

was developed with the appellant owning the site since about 2016. Although the appellant states there is a functional separation between the caravan use and the boating use, I find they are linked in that they are both leisure uses that appear to make use of the same facilities. Whilst the appellant accepts there is a physical connection in that caravanners and boaters both make use of the same access road into the site, it seems to me the uses cannot be so easily uncoupled.

26. In order for both uses to function, there needs to be waste disposal and it appeared walking around the site that waste collection points are spread evenly around the whole site, there being no obvious signage that separated caravan waste from boating waste. Car parking is also not separated. Although there is a parking area next to the slipway, which may be reserved for boaters, it is also next to a group of caravans overlooking the marina. Since most caravan pitches are not wide enough to include an off-road parking space, cars are generally parked in white painted bays singularly or in groups all around the site.
27. The site also provides a launderette and shower block which could be for boaters but the launderette could also be for the use of caravanners as generally not all caravans have washing machines. In addition, there is a clubhouse on site, which appeared to be open to all. Finally, I have noted from one of the letters supporting an LDC application for the recreational use of the southern field that there is an annual gathering of boat owners on the field.

Conclusion

28. For these reasons I find the site comprises one planning unit which is in a mixed use. The boating use is not incidental to the caravan use, it is a significant use on its own but the way it functions makes use of some of the same areas and facilities as the caravan use. To a certain extent the areas of occupation are separate in that the boaters largely occupy the water but it is for the same purpose as caravanners, namely leisure.

Whether the planning unit includes the southern field

29. An LDC was granted in 2019⁴ establishing the existing use of the southern field as ancillary recreational land used in connection with LVCP. The effect of this LDC is that it confirms caravanners and boaters have used the southern field for various types of informal recreation for over 10 years whilst they have occupied LVCP.
30. The use is not a primary use as it cannot be severed from the caravan and marina use. The site is only used by the caravanners and boaters when they are in residence so there is a strong functional link with LVCP. It must therefore be an ancillary use.
31. I agree with the Council that the LDC does not define the planning unit but it is part of the planning history of the site. Determining an LDC appeal is an interpretive process and as such it is open to me to consider whether any inference can be drawn from the LDC.
32. In this case there is no public access to the southern field. For example, it is not bounded or crossed by any public right of way. Access to it is from within

⁴ Reference: 19/500238/LDCEX

LVCP, where there is a gap between some caravans. It can therefore only be used by holiday makers. Their evidence described informal recreational use and the use of the southern field that has been found to be lawful is stated on the decision notice as “ancillary recreational land used in connection with Little Venice Country Park”. It seems to me, as a matter of fact and degree, that must mean the southern field is part of the planning unit.

33. The Council refer to the case of *Axbridge*⁵ but my reading of the circumstances in that case leads me to conclude that it is not comparable with the appeal before me. For example, the conclusion on the land used in conjunction with the caravan site was made after considering the nature of the land surrounding the single caravan in that case. It was found to be wasteland comprising sand dunes which were crossed to access the beach. The southern field, in contrast, is a regularly maintained piece of land that is used for a variety of activities throughout the year.
34. For these reasons I find the southern field is part of the caravan site and marina. My next consideration is therefore whether 10 caravans sited on the southern field would amount to a material change of use.

Whether there would be a material change of use

35. It is not disputed that intensification of a use is capable of constituting a material change of use. However, a change in use can only be material if there is a definable change in the character of the use made of the land. This is the first step in the consideration process.
36. The Council have made the assessment as being whether there would be a definable change in the character of the use of the southern field. This is on the basis that it is a new planning unit and the southern field was outlined in red on the 2019 LDC application plan. However, this overlooks the point that the use of the southern field is in connection with the caravans and boats and is therefore not a new separate planning unit. Furthermore, the red line delineates the area of land which is the subject of the LDC application.
37. The majority of the site is used to station 120 static caravans. Whether all or some are used for permanent residential purposes, as opposed to seasonal holiday purposes, does not fall to be considered. It goes without saying that caravan sites vary in their appearance and the matters taken into account by the Council do not necessarily indicate permanent residential use is taking place. Indeed, when asked, the Council confirmed it had no evidence to contradict the appellant’s statement on the matter.⁶ What is relevant to an assessment of the character of the site are the features and qualities that make the place different from others.
38. To that end it is the number and disposition of the caravans and to a lesser extent the incidentals that accompany the stationing of caravans that define the character of the use of the site. That character is also derived from the mooring of boats in the marina and alongside the River Medway. Against this finding, the proposed development would not change that character as the site would continue to be used to station caravans and to moor boats. As such, the proposal would not result in a material change of use.

⁵ *R v Axbridge Rural District Council* [1964] 1 WLR 442

⁶ Planning Practice Guidance reference ID:17c-006-20140306

39. Notwithstanding my finding on character, if I had found otherwise, then the next step to consider is whether there are any off site effects in order to determine the materiality of that change.
40. That allegedly there would be an increase in noise and traffic does not result in a material change of use. There needs to be a significant effect of that increase on an existing noise and traffic issue but the Council were not aware of any such issues. Similarly, I find no visual harm, as alleged, as the 10 caravans would be seen against the backdrop of the existing caravan site. References to operational development do not fall to be considered as the appellant's application is made under section 192(1)(a) of the 1990 Act and the description of development is unambiguously described as a use of land.

Other matters

41. The Council sought clarity that the application would not involve operational development by suggesting an addition to the description of development but I find this is not necessary when the basis of the application is clearly understood. It would be unduly restrictive to define the use further and it is open to the Council to consider the situation should the appellant go beyond the description of development when implementing the use. It is also open to the appellant to submit a planning application for operational development, should that be necessary, prior to implementing the use.
42. I have had regard to the Council's appeal decision.⁷ This concerned a specific structure and on the facts of that case it was found to be a building. The matter being considered by that Inspector was whether the structure met the statutory definition of a caravan. The case is neither comparable to nor assists with the matter being considered in the current appeal, which is whether the development would amount to a material change of use.

Conclusion

43. 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 proposed stationing of 10 caravans for holiday use 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 as amended.

D Fleming

INSPECTOR

⁷ Reference: APP/W3005/X/22/3302578

APPEARANCES

FOR THE APPELLANT:

M Rudd	Of Counsel
G Bailey	Senior Director, RPS Group
A Lee	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

R Morton	Solicitor, Ivy Legal, instructed by Maidstone Borough Council
N Whittaker	Senior Planner, Ivy Legal

Document

1 Appeal decision,
APP/W3005/X/22/3302578



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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 2 February 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 proposed use would not amount to a material change in the use of the land as there would be no definable change made in the character of the use of the land. It would not therefore fall within the meaning of development set out in section 55(1) of the Town and Country Planning Act 1990 as amended and no planning permission is required.

Signed

D Fleming

Inspector

Date 5 December 2023

Reference: APP/U2235/X/22/3300066

First Schedule

Proposed stationing of 10 caravans for holiday use.

Second Schedule

Land at Little Venice Country Park and Marina, Hampstead Lane, Yalding, Kent ME18 6HH.

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: 5 December 2023

by D Fleming BA (Hons) MRTPI

Land at: Little Venice Country Park and Marina

Reference: APP/U2235/X/22/3300066

Scale: not to scale

