



Appeal Decision

Site visit made on 4 September 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2024

Appeal Ref: APP/J3720/X/22/3308917

The Log Cabin And Campsite, Wood Lane, Tidbury Green, Solihull B94 5JP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr George Broadway of Earlscrest Limited against the decision of Stratford-on-Avon District Council.
 - The application ref 21/03457/LDE, dated 26 October 2021, was refused by notice dated 7 July 2022.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a LDC is sought is described as 'use of the land and buildings for outdoor recreation and camping including a log cabin for sleeping accommodation, a toilet/shower cabin, and a residential warden's lodge'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has requested a revision to the description of the existing use for which a certificate is sought. However, I have assessed this appeal on the description set out in the application form submitted to the Council since that is what the Council made their decision on, this being the description detailed in the banner heading above.

Main Issue

3. The main issue is whether the Council's decision to refuse a LDC was well founded.

Reasons

4. Section 191(2)(a) of the Act provides that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them, whether because they did not involve development or require planning permission, or because the time for enforcement action has expired or for any other reason.
5. With regard to use of land section 171B(3) of the Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. Therefore, in this case, in order to be lawful the use described must have commenced at least 10 years before the application date (hence before 26 October 2011) and continued without any significant interruption thereafter for at least a 10 year period of time.

6. The burden of proof is on the appellant and the relevant test is the 'balance of probability'. If the local planning authority has no evidence itself to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities. It is therefore necessary to consider whether, on the facts of the case and relevant planning law, the specific use for which a certificate is sought was lawful at the date of the application.
7. The appellant explains, in their statement of case, that the appeal site is a singular planning unit, that the use of the site and buildings comprise one singular mixed use and that the use of the site has accrued immunity from enforcement action over the passage of time. The appellant claims that the use of the land has been well established since the 1920's with submitted evidence to establish this including photographic evidence, aerial images, history of planning applications on the site from 1978, newspaper articles, a Google review and letters from local residents. This evidence is examined in the following paragraphs.
8. The appellant has provided evidence claiming the site has been in use dating back to the 1920's. This includes weblinks of charity registers indicating that a number of youth clubs (such as the Birmingham Federation of Boys' Clubs, Birmingham Federation of Clubs for Young People and Bournville Youth Club), along with title plan indicating that the site has been in one ownership and photos of an entrance sign and two historical plaques. However, while this evidence points to the operators of youth clubs at the appeal site, within a single ownership, it does not provide substantial evidence of the actual use of the land for any continuous period as a mixed use for outdoor recreation and camping.
9. For the period between 1950's to 1978 the appellant has submitted a number of supporting letters from people that describe how the site has been used in the past including for children camping and undertaking recreational activities. Whilst there is reference to activities taken place between the years of 1962 and 1965, beyond this there is no detailed evidence of the site being used for the activities described for a continuous period of over 10 years.
10. During the periods of 1978 to 2008 there were a number of planning permissions granted relating to the appeal site. Permission (ref: 78/01624/FUL) was granted in 1979 for tarmacadam surfaced playing area 80ft by 50ft with permission (ref: 84/00414/FUL) granted in 1984 for extension to existing amenity building. The submitted block plans for each of these permissions have 'camping' annotated on the plans, however, the permissions granted are for buildings and operational development rather than for a particular or specified use for the whole of the land subject of this appeal. The decision notices themselves do not specifically indicate that the use of the land and buildings within the site are for outdoor recreation and camping.
11. Permission (ref: 97/00989/FUL) was granted in 1997 for an extension to provide female toilet accommodation. The site plan for this permission does not describe an area for camping and the permission is for a building and the decision notice does not describe the use of the site. Similarly, with the permission (ref: 99/03548/FUL) for replacement accommodation for Wardens and replacement toilet and shower block that was granted in 2000, permission

is granted for buildings with no indication of the use of the whole of the site. Permission (ref: 07/03479/FUL) was also granted, in 2008, for erection of new toilet and shower cabin to replace existing. The design and access statement associated with this permission does describe that *'the site offers a large camping area with space for games and the opportunity for youngsters to experience 'real camp fires'.* This permission, however, is for buildings and not a particular or specified use of the whole of the site, and the decision notice does not describe the use of the site.

12. The planning permissions ranging from 1978 to 2008 grant permission for buildings and operational development, and do not relate to a particular or specified use for the whole of the land subject of this appeal. Whilst the red line boundaries of these permissions largely match the appeal site, the permissions do not provide substantial evidence that the appeal site has been in a mixed use for outdoor recreation and camping for a 10-year continuous period.
13. Aerial photographs of the site have been provided dated with the year 1999 with one of the aerial photographs stated as being December 1999. These images do show tent like structures, however these images do not provide clarification on whether the tents were used for camping. There are also discrepancies with the December 1999 aerial photograph as the image shows the trees in full leaf which would be unlikely during winter months. Aerial photographs have been submitted by the appellant ranging from 2001 to 2007 which indicate there were no tent like structures on the site within this period.
14. News articles dated 2009 describe a youth club and an outdoor centre at the appeal site with the Log Cabin being renovated, indicating that the site has been enjoyed by thousands of young people since the 1950's. The news articles do not provide substantially clear evidence that the whole of the site subject of this appeal has been used for a continuous period of 10 years for outdoor recreation and camping.
15. During the period of September 2010 to April 2020, the appellant has provided aerial photographs that show a range of tent like structures including the positioning of football goals and grass burns. The appellant describes some of the images as having tents and some as having marquee type tents. These images do not confirm the specific use of the tents and tent like structures, and whether they are being used for outdoor recreation and camping. These aerial photos are dated from September 2010 to April 2020 and relate to specific dates and hence are snapshots in time of those particular dates. They do not show a continuous uninterrupted period of 10 years.
16. A Google image of the Warden's Lodge with tents in the background dated April 2017 and a Google review posted 2018 have been submitted as evidence. The tents visible in the Google image does appear to match up with the aerial photograph of 2017, however, as described above this does not provide clear and unambiguous evidence that the tents were used for outdoor recreation and camping and for more than 10 years. The Google review describes how the person used to camp at the site as a young lad and as a teenager and that there was an adventure playground with a zip wire. The review does not provide any specific dates of when this person has camped nor are any exact locations of where the camping took place.
17. Photographs dated February 2022, of various parts of the site have been provided by the appellant. The submitted photographs are of the exterior and

interior of the Norman King building, the Wardens Lodge, the Log Cabin and general areas of the site including outdoor recreation areas. Photographs of the Norman King Building shows there are toilet and shower facilities, with kitchen facilities including an oven and kettle with some rooms storing equipment. Images of the Log Cabin show rooms with bunk beds, a kitchen, toilet and shower facilities, rooms with tables and chairs including a television with some outdoor seating areas. The photographs described as "general areas of the site" show a basketball court and an assault course. The buildings are all shown on the photographs to be boarded up and in a state of disrepair. At my site visit I saw that the buildings had fallen into a further state of disrepair, some having fire damage with the Log Cabin being mostly demolished. I accept that the photographs point towards some past use for outdoor recreation on the site. However, they do not establish that the site has been used for outdoor recreation continuously over a 10-year period. The images also do not provide confirmation that camping was undertaken on the site for a 10-year continuous period.

18. Prior to 1978, there is insufficient evidence to establish that the site was used for a continuous period of 10 years for a single mixed use of outdoor recreation and camping. The planning permissions, ranging from 1978 to 2008, provide a narrative on the history of the buildings that are on the site, however there is no compelling evidence clarifying the use of the buildings or the land which makes up the site subject of this appeal, or whether the buildings were directly related to an outdoor recreation and camping use for a continuous 10-year period. Whilst the appellant claims that the appeal site has operated as a use for outdoor recreation and camping between the years of 2010 and 2020, the submitted aerial photographs do not show a period of 10 years and they also do not provide specific confirmation that the tent like structures shown in the photographs were used for outdoor recreation and camping. The 2018 Google review is lacking in specifics and does not offer a significant period of when the site may have been used as outdoor recreation and camping. The photographs of the buildings dated February 2022 are a snapshot in time and do not provide clear evidence that the appeal site has been used for a continuous 10-year period for outdoor recreation and camping.
19. Accordingly, having regard to all of the evidence before me, I find as a matter of fact and degree and on the balance of probability, that the whole of the appeal site, including the land and buildings, has not been in use for outdoor recreation and camping including a log cabin for sleeping accommodation, a toilet/shower cabin, and a residential warden's lodge for more than 10 years before the date of the application.

Conclusion

20. I conclude on the balance of probability, that the Council's refusal to grant a LDC in respect of the use of the land and buildings for outdoor recreation and camping including a log cabin for sleeping accommodation, a toilet/shower cabin, and a residential warden's lodge, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the Act.

Chris Baxter

INSPECTOR