



Appeal Decision

Site visit made on 28 November 2023

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 January 2024

Appeal Ref: APP/F1610/X/22/3312769

**Valley View Park, Old Gloucester Road, Bourton-on-the-Water,
Gloucestershire GL54 3BH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Carl Barnard of Mackland Limited against the decision of Cotswold District Council.
 - The application Ref 22/01898/CLEUD, dated 27 May 2022, was refused by notice dated 21 July 2022.
 - The application was made under section 191(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is recreational land, storage, parking and maintenance area ancillary to the caravan site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. The appellant considers the Council has failed to comply with the requirements of Article 39(13) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, which requires the decision notice to state clearly and precisely the full reasons for the decision. It is argued that it is not clear whether the Council disputes the use for recreation or its incidental use. In addition, the Council failed to attach the correct notice of the right to appeal under section 195.
4. I am satisfied that the Council's notice is sufficiently clear and precise. It states that it has not been demonstrated that Area B has been used for recreation, incidental to the caravan site for a continuous period of 10 years. It is apparent on what basis the application was assessed and it was refused due to what was found to be a lack of evidence. The details in respect of the appeal procedures were incorrect, but the appellant has not been prejudiced as a valid appeal was made.

5. The Council and the appellant refer to the evidence submitted as Statutory Declarations. A Statutory Declaration is a formal statement made under the provisions of the Statutory Declarations Act 1835 to affirm that something is true to the best knowledge of the person making the declaration. Any such declaration must be witnessed by and signed in the presence of a solicitor, commissioner for oaths or notary public, who should add their signature and details. A Statutory Declaration which is properly made and sworn should be treated as first-hand evidence.
6. In this case, none of the numerous statements submitted on behalf of the appellant are properly witnessed. Only one of the statements submitted by local residents, that of Mr Jeans, has been properly witnessed. If a document is purported to be sworn but does not appear on its face to be a Statutory Declaration, it cannot be afforded the same weight. Consequently, I afford the witness statements moderate weight.
7. I have taken the description of the lawful development sought from the application form, which is repeated in the appeal statement. This differs from the description provided by the Council in its decision notice, which details the recreation use. The terms of an application made under section 191(1)(a) of the 1990 Act are defined by the appellant. However, section 191(4) allows the local planning authority to modify the description of the existing use, operation or other matter. The Secretary of State, or Inspector, may exercise this power on appeal and is obliged to issue an LDC for any use or development that is shown to be lawful on the facts and evidence, rather than refuse a certificate on the basis of some error or misunderstanding in the application form. I have had regard to this provision in my consideration of this appeal.

Background and Main Issue

8. The application sought confirmation that the use of the appeal site for purposes ancillary to the caravan site was lawful. What must be considered is whether the appellant has shown, on the balance of probabilities, that a material change of use of the appeal site to use as recreational land, storage, parking and maintenance area, ancillary to the caravan site, took place 10 or more years prior to the date of the application and continued after the date of change without significant interruption such that it is too late for the Council to take enforcement action.
9. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.
10. Given the matters at issue, it is necessary to provide a summary of the relevant planning history.
11. An LDC was granted for the existing use of Area 'A' for recreation, domestic storage, parking and maintenance area and for Area 'B' as recreation incidental to the caravan site on 22 September 2020 (Ref 20/02144/CLEUD). This was subsequently revoked on 23 May 2022.
12. The Council then granted an LDC for the existing use of Area 'A' for recreation, domestic storage, parking and maintenance on 21 July 2022 (Ref 22/01897/CLEUD). A further LDC was granted for the existing use of Area 'A' for recreation, domestic storage, parking and maintenance ancillary to the caravan site on 3 November 2022 (Ref 22/03092/CLEUD).

Reasons

Evidence on behalf of the appellant

13. The appeal site (which has been referred to as Area 'B') lies to the south of a development of existing mobile homes or caravans, known as Valley View Park, which was initially granted planning permission in the 1950s. The site is separated from the caravan park by trees and a hedge, with access via a gate. It is mainly laid to grass. The appellant acquired the land at Valley View Park, including the appeal site, in the mid-1980s. It is stated that the site is managed as part of the wider caravan park and is used regularly by the residents as general parkland or amenity space.
14. The witness statement from Mr Barnard, the appellant, dated 22 November 2021 is an updated version of a previous statement dated 10 August 2020. It states that the appellant acquired Valley View Park, the caravan site and the appeal site, in the mid-1980s and he has managed and operated it since then. Since acquisition, the appeal site has been used solely for purposes ancillary to the caravan site. Mr Barnard describes the 'northern parcel' and the 'southern parcel'. The northern parcel is outside of the appeal site and so its use is not relevant to the matters before me.
15. The southern parcel is described as having been used as a recreational/dog walking area by residents and for playing ball games, regularly and consistently throughout his ownership. There have been sheep on the field on an occasional basis to keep the grass down, but this did not interrupt the recreational use. It is explained that people, mainly residents, were occasionally allowed to keep horses in the field for recreational purposes.
16. A witness statement, dated 27 January 2022, has been submitted by Mr Dyer, a resident of the caravan park since around April 2010. Mr Dyer states that the site has been used by residents and visitors for recreational purposes, such as dog walking. It has not been used for any other purpose in the last 10 years, aside from some sheep for a few weeks. Mr Dyer also explains that he kept horses in the field in 2010, which supports the submission of the appellant in relation to this matter.
17. Mr Hemmings, who has lived at the adjoining property since 1987, has provided a statement dated 6 April 2022. This states that the southern field has been used by dog walkers from the caravan site for at least 30 years, with only occasional use for grazing.
18. Mr and Mrs Hall, residents of the caravan park for at least eight years, have submitted witness statements dated 18 October 2021 and 30 March 2022. These state the site has been used by residents and their visitors for dog walking on a regular basis with very occasional use for grazing sheep and horses. A further document, dated 2 December 2022, provides details of the dog walking activities.
19. Mr Cross, a farmer, has provided a statement dated 30 March 2022. This explains that he has been providing the appellant with sheep to be kept on the site since 2010. This amounted to three occasions when a maximum of six sheep were kept for six weeks at a time.
20. Mr Forbes a resident for at least 19 years, in a statement dated 7 June 2020, says the southern part of the site has been used by residents for recreational

- purposes, such as dog walking, and he has not seen it used for any other purpose in the last 10 years. Similar statements have been submitted by Mr Snowden, dated 12 May 2020, and Mr Lewis, dated 11 May 2020.
21. Mr T Tyack, who has been employed as a groundskeeper at Valley View Park since 2005, has submitted a statement dated 3 July 2020. Mr Tyack confirms the site has been used consistently as recreation land associated with the caravan park for at least 12 years and he has not seen it used for any other purpose during the last 10 years. A further statement, 30 November 2022, describes social functions held in the field a couple of times a year, in addition to regular use for dog walking.
 22. Mr S Tyack, in a witness statement dated 18 October 2021, states that he has been employed since 2005 to carry out groundworks and maintenance at Valley View Park. He explains the site has been used for recreational purposes associated with the caravan park during his employment.
 23. Mr Acock, who has worked as an electrician at the caravan park since approximately 2006, has provided a witness statement, dated 18 October 2021. It is explained that he has seen the field to the south used regularly by residents for recreation, including dog walking and for games, and on the odd occasion for sheep or horses.
 24. Mr Hughes worked as a groundskeeper at Valley View Park until 2021, and has also submitted a witness statement, dated 18 October 2021. This states the site was open and available for recreational use by residents throughout the time he worked at the park. The land was used for occasional grazing. This supports the comments made by the appellant.
 25. Ms Todd, a resident since 2004 has provided a statement, dated 18 October 2021. She says the site has been used continuously for recreational purposes the whole time she has lived there, and for sheep and horses on one or two occasions for short periods of time. A further statement from Ms Barrett, dated 18 October 2021, is provided. This is signed by J Barrett but was declared by Helen Todd. I have discounted this document.
 26. A witness statement has been provided by Mr Lovatt, dated 18 October 2021, which says he has witnessed the site being used by residents for recreational purposes. Occasional horses and sheep were kept on the site. Mr Lovatt is a heating engineer who has worked at the caravan park since 2011.
 27. In addition to the statements, aerial images (dated 1945-1950, 1999, 2003, 2004, 2005, 2006, 2007, 2009, 2010, 2012, 2014, 2015, 2018, and 2019) have been submitted to show the development of the caravan park and the appeal site. The images indicate the appearance of the site has remained largely the same over the years.

Other evidence

28. The Council has provided witness statements and/or letters of representation from other parties, which I understand were submitted in connection with the Council's decision ref 20/02144/CLEUD.
29. Letters from the management company of the adjoining residential development, known as The Paddocks, sets out the organisation's view that the site was used for grazing between 2004 and 2019. The evidence includes

witness statements and photographs. It is claimed there have only been two instances of dog walking observed when the paddock was not occupied by livestock. In addition, horses have been present for extended periods, and sheep were frequently kept on the land within the relevant period. It is argued that the site has not been used for ball games.

30. Mr Mealor's statement, dated 11 February 2022, explains he lives next to and overlooks the site. It is said that the field has been used on numerous occasions for grazing horses, cattle and sheep during the preceding 10 years. He states he has never seen the field used for recreational purposes. The witness statement of Ms Watkin, a resident of The Paddocks since 2007, is very similar in content.
31. Mr Russell, a resident of The Paddocks since 2012, states that horses have been kept on the site on many occasions over the last 10 years. He describes a water trough and two shipping containers for shelter. He also describes seeing a small flock of sheep on many occasions, and cattle for several months. Mr Russell makes similar comments about never having seen anyone using the field for ball games or walking dogs since 2010.
32. Mr Williams has submitted a statement, dated 11 February 2022. He is also a resident of The Paddocks and has been since 2006. He says he has seen horses and sheep on the site on numerous occasions and has no recollection of ever seeing people in the paddock.
33. Mr Jeans, a resident of The Paddocks since 2004, has provided sworn evidence in the form of a Statutory Declaration. It states that his house is adjacent to the land and has a common boundary. As such, he has views over the land in question. It is stated his belief is that the land was not used for recreational purposes but for agricultural purposes (stock grazing) from at least 2004 to 2019. The statement is signed and dated 9 February 2022 and was duly witnessed by a person authorised to administer oaths.
34. There are also photographs taken from the garden of an adjoining property between 2004 and 2020. These show horses and sheep, although I cannot be certain they all show the land in question as this is disputed by the appellant.
35. In summary, the use of the site by residents for walking their dogs is attested to by the appellant, the residents themselves, contractors and staff and the next door neighbour, Mr Hemings. The use for football and golf is further explained by the appellant who refers to the broken goal post, numerous lost golf balls and a recent 'no ball games' notice. Mr Tyack has described the use of the field for social events. None of the statements describe the site being used for parking, storage or maintenance, which is set out in the description of the lawful development sought. As explained above, I may modify the description and so I have focussed on the recreational activity only.
36. In contrast, several neighbours state they have not seen any such use taking place and instead describe the use of the site for agricultural purposes. The appellant seeks to explain this as 'de minimis' that would not equate to a significant interruption for the purposes of demonstrating a lawful use.

Analysis

37. The appeal site is contiguous with the caravan park, but there is an element of physical separation in the form of a dividing hedge, which has remained in situ

over the years. I appreciate there is no access restriction between the two areas. Nonetheless, they are very different in terms of character and appearance. The land to the north is predominantly a caravan park while the appeal site is a paddock. The appearance of the two areas has remained largely unchanged, as shown by the aerial images. Consequently, I consider these to be two physically separate areas.

38. The appellant has sought to argue there is a functional link between the two areas, resulting from the recreational use of the appeal site. It is indicated they form a single planning unit.
39. While the appellant has submitted numerous witness statements from a range of residents and site operatives, several of these are very similar in content and many lack detail. There is no other documentary evidence, such as photographs of dog walking, ball games or social events, or communications about the use of the land between the site operator and residents.
40. I am also in receipt of several witness statements from neighbours. There is some replication of content between these statements, and some also lack detail in terms of dates. In addition, the photographs are unclear, and I am not satisfied that all can be relied upon. However, the statements provide contradictory information of equal weight to that of the appellant.
41. The aerial images do not lend support to the argument that the site has been used regularly and consistently for recreational or other incidental purposes throughout the relevant period. June 2003 shows the grass is more worn through the gate and across the field, which is less evident on the later images. There are two white structures that appear against the southern boundary in March 2012, one of which remains in July 2014, but it is unclear what this was used for. There are signs of wear in the April 2015 image between the gate, an area of sand/gravel storage in the south-west corner and the site of the white structures, but this is not necessarily indicative of recreational use. There is some minor wear of a route across the site in June 2015, but this is not apparent in May 2018, June 2018 or September 2019. I would expect there to be more evidence of erosion if the site were used regularly for walking dogs and/or for ball games.
42. In addition, the aerial images and photographs show animals on the land. It is clear to me that the land has been used for grazing within the relevant period and, while this may have been limited in intensity, the levels described by the appellant's own evidence cannot be described as de minimis.
43. As explained above, the onus of proof is on the appellant. Crucially, the levels of recreational activity described by the appellant are not backed up by sufficient evidence. The evidence needs to show that the claimed use of the appeal site for recreational purposes, in association with the caravan park, amounted to a material change in the use of the land. For a material change of use to occur, there must be some significant difference in the character of the use of the land from what has taken place previously. There may well have been dog walking on the site over the years, but I do not consider that the level and intensity of the use was such that it amounted to a material change of use, as a matter of fact and degree.
44. Moreover, the levels of activity taking place would not necessarily have alerted the Council that the site was being used for recreational purposes in association

with the caravan park, and that this amounted to a breach of planning control. I am not satisfied that the Council could have taken enforcement action in these circumstances.

45. I consider that the evidence provided on behalf of the appellant is not sufficiently precise and unambiguous. It has not been shown, on the balance of probabilities, that a material change of use of the appeal site to (i) use as recreational land, storage, parking and maintenance area, ancillary to the caravan site, or (ii) recreation incidental to the caravan site, took place 10 or more years prior to the date of the application and continued after the date of change without significant interruption, such that it is too late for the Council to take enforcement action.
46. For these reasons, the appeal must fail.

Conclusion

47. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of recreational land, storage, parking and maintenance area ancillary to the caravan site 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.

D Moore

Inspector