



Appeal Decision

Site visit made on 14 March 2024

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 18th April 2024

Appeal Ref: APP/J2210/X/23/3325471

Beggars Roost, Woolage Green Road, Woolage Green, Canterbury, Kent, CT4 6SF

- 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 Mrs Jacqueline Leatherbarrow against the decision of Canterbury City Council.
 - The application Ref CA/22/02543, dated 1 December 2022, was refused by notice dated 19 April 2023.
 - 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 land as a caravan site.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate decision.

Reasons

3. The appeal concerns the refusal of an application for a LDC and turns on matters of law rather than the planning merits of the proposal. The onus of proof is upon the appellant. The main issue is whether the Council's decision to refuse the LDC was well-founded. This turns on whether or not the appeal site could, on the date of the application, be lawfully used as a caravan site, and if so, whether there are any restrictions on that use.
4. The application and appeal site is a parcel of land to the west of the small village of Woolage Green. It is to the north-east of, and has access from, Wick Lane, and lies to the west of the residential property Beggars Roost, the address used in the application. It was for many years a caravan site, apparently known as Wishing Well Caravan Site, benefitting from a number of planning permissions. Planning permission was granted (Ref 54/35C) in 1955 for: "Use of land for stationing of caravans and their use for residential purposes". This was a 3-year temporary permission. A further permission was granted in 1958 for a "Caravan Park", also on a 3-year temporary basis. A separate permission was granted in 1958 for a "lavatory block". Another permission was granted in 1961 for "Continued use as a holiday caravan site". This permission was subject to a condition requiring the use to cease and the land restored to its original

condition by 31 January 1976. Permission was then granted in January 1974 for "the use of land as a seasonal holiday caravan site with winter storage". This was subject to a single condition stating "(1) the use for which permission is given shall be limited to the period between 1 March and 31st October each year." The reason given for imposing the permission was "in order to ensure that the site which is located in a rural area is used for seasonal purposes only." The application plans for the 1974 permission have not been provided, and may not have survived. However, based on the history of use and permissions I consider it more likely than not that the extent of the site was the same as that granted permission in 1954 and for which a layout plan has been provided.

5. Historical aerial imagery indicates that the land was in use as a caravan site up to about 1990, but some time thereafter the actual use appears to have ceased entirely. A single structure that may be a caravan can be seen in imagery dated 2000, but it is not clear what the structure actually is or to what use it was being put, though a neighbour claims that a caravan remained on the site and was used in connection with the redevelopment of the dwelling at Beggars Roost. In any case the structure appears to have been sited on land that has now been incorporated into the residential garden area of Beggars Roost. It is not disputed that there has not been any actual caravan site use of the appeal site for some time.
6. The basis of the Council's refusal is that the caravan site use has been abandoned. However, it is well established in case law¹ that a planning permission which is capable of being implemented cannot be abandoned. It is also the case that a use may be regarded as 'existing' and lawful even if it is dormant or inactive². There are however means by which a planning permission can be rendered unimplementable, and the Council has put forward relevant considerations.
7. An existing lawful use of land which is authorised by a planning permission is capable of being extinguished by a material change of use to some other use, including by the creation of a new PU in respect of the land in question³, by the implementation of an inconsistent planning permission or the carrying out of acts inconsistent with the continuation of a lawful use, by a Discontinuance Order made under section 102 of the 1990 Act or in accordance with a planning obligation made under section 106 of the Act, or by express condition on a subsequent implemented planning permission. Those latter two means have not occurred in this case so need no further consideration.
8. There is some evidence of other uses to which the Wishing Well site has been put since caravan site use has ceased. An application for planning permission for a swimming pool structure and extension to the existing garage serving the dwelling at Beggars Roost (Council Ref. CA//15/00083) in 2015 included the appeal site within the red line denoting the application site, suggesting a residential use. The land has evidently been used for access for construction access for that development, and a neighbour has claimed that it has been used for occasional car parking associated with Beggars Roost as well as children's play and dog walking, also indicative of a residential use. A prior approval application for the conversion of the toilet block in the north-west corner of the appeal site to a dwellinghouse was also made in 2016 (Ref. CA/16/01395). This

¹ Pioneer Aggregates (UK) Ltd v SSE [1984] 2 All ER 358; [1984] JPL 651

² Panton & Farmer v SSETR & Vale Horse DC [1999] JPL 461

³ Stone v Secretary of State for Communities and Local Government [2014] EWHC 1456 (Admin)

claimed the building to be an agricultural building used in connection with the use of the land as a paddock, presumably in agricultural use. Although somewhat inconsistent, the applications and evidence of use suggest that the land was being put to either residential use connected to the dwellinghouse at Beggars Roost or to agricultural use, notwithstanding that the Council did not accept the latter claim. Either would have comprised a material change of use capable of extinguishing the 1974 planning permission.

9. Of more importance however is the incorporation in about 2013 of a significant proportion of the Wishing Well site into the land associated with Beggars Roost. This has included substantial operational development for residential purposes on former caravan site land that has replaced some of the caravan site infrastructure, including the entrance and vehicle parking and manoeuvring areas shown on the 1954 layout plan. This amounts to a material change of use of, at the very least, the former Wishing Well land incorporated into Beggars Roost. The incorporation of a substantial part of the caravan site into Beggars Roost and the replacement of caravan site infrastructure by a residential building and associated development is, in my view, an act inconsistent with the continuation of the caravan site use. Among other things, access to the site from Woolage Green as envisaged in the 1954 layout would now cross the extended Beggars Roost residential land. While I appreciate that the 1974 permission does not specify a layout, and that the reduction in site area would not necessarily prevent the use of the appeal site as a caravan site *per se*, I consider, on the balance of probabilities, as a matter of fact and degree, that the changes in extent, access and infrastructure have rendered the 1974 permission, which was granted for the whole of the Wishing Well site as it had been operating up to then, incapable of implementation in accordance with its terms. As such the appeal must fail.

Other Matters

10. The Wishing Well caravan site has historically benefitted from a site licence, which is in any case a legal requirement. No copy is available, but the appellant has suggested that an entry in a Council spreadsheet to the effect that it had a site licence but not planning permission is evidence that the site had a deemed planning permission by virtue of Section 17 of the Caravan Sites and Control of Development Act 1960. Given that the planning permission was granted by Kent County Council and that Canterbury City Council had no record of it, it is hardly surprising that the spreadsheet recorded no permission, but in any case the record alone is not, without further detail or context, capable of bearing the meaning that the appellant has attributed to it, particularly as the site appears to have benefitted from express permission while it was operating.

Conclusion

11. For the reasons given above and having regard to all other matters raised, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land as a 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.

Paul Dignan
INSPECTOR