



Appeal Decision

Hearing Held on 6 August 2024

Site visit made on 6 August 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date 16 August 2024

Appeal Ref: APP/X2220/X/21/3271658

Wass Drove Farm, Wass Drove, Westmarsh, Canterbury CT3 2LT

- 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 J Preston on behalf of Wyldecrest Parks (the trading name of Best Holdings (UK) Limited) against the decision of Dover District Council.
 - The application Ref 20/00344, dated 23 March 2020, was refused by notice dated 3 December 2020.
 - 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: stationing of up to 5 caravans for all year round residential occupation and up to 25 caravans for residential occupation during the period 1st March and 30th November each year.
 - This decision supersedes that issued on 31 August 2022. That decision on the appeal was remitted for re-hearing and determination by consent order of the High Court.
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Decision: the appeal is dismissed

Procedural matters

1. A Hearing into the original case was held in June 2021 but, for various reasons, a site visit was not held until July 2022. The original Decision was issued the following month, with the appeal being dismissed.
2. The Decision was then subject to a challenge in the High Court on three grounds. Grounds 1 & 2 related to procedural unfairness, whereas Ground 3 was that the Inspector erred in law in concluding that there would be a “definable change in the character of the use of the land” in respect of the stationing of three additional caravans for all year-round occupation.
3. The Secretary of State accepted that Inspector’s approach was the decision was procedurally unfair given that the inspector reached a judgment about the use of the site without having raised this point with the parties. By Consent Order dated 25 March 2024, the High Court directed that the matter shall be determined, afresh, by a different Inspector.
4. However, because the Secretary of State provided no view as regards ground 3, the High Court made no finding either way as to whether the Inspector had erred in law in concluding that there would be a definable change in the character of the use of the land.

5. The proposed development for which the LDC sought is the proposed use of "stationing of up to 5 caravans for all year round residential occupation and up to 25 caravans for residential occupation during the period 1st March and 30th November each year". In determining the original application for the LDC, the Council misdescribed the proposal, incorrectly stating that the number of caravans in seasonal use on the site would increase from 27 to 30. The appellant subsequently produced a procedural note that corrected the error and confirmed that the total caravans on site could be up to 30, but the permitted number of caravans in seasonal use would remain at 25 (albeit the period of seasonal use would change). I have determined this appeal on the basis of the description in the appellant's procedural note.

Reasons

6. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

Background

7. On 15 June 2018, a certificate of lawful use or development was granted on appeal for:

The use of the land as a caravan site in accordance with section 1(4) of the Caravan Sites and Control of Development Act 1960 for the all year round residential occupation of not more than 2 caravans falling within the statutory definition pursuant to section 29 of that Act and for residential occupation of not more than 25 caravans during the period 1 April to 31 October in any year.

The LDC that was granted (hereafter the 2018 LDC) is of course conclusive of the particular use specified in it. The precise terms of that LDC are of fundamental importance to the outcome of this appeal, and for that reason it is helpful to set out in some detail here the basis on which the LDC was issued.

8. It is clear that the 2018 LDC was issued on the basis that the use as a caravan site accorded with Caravan Sites and Control of Development Act 1960 (the 1960 Act). Section 1(4) of that Act defines the expression "caravan site" as meaning land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed. Section 29 of that Act defines "caravan" as meaning any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include— (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.

9. The common denominator between sections 1(4) and 29 of the 1960 Act is that caravans and caravan sites is the concept of human habitation. It follows from section 1(4) of the 1960 Act that land on which a caravan is stationed for purposes other than for human habitation would not qualify as a caravan site. It is this concept of human habitation that, it seems to me, underpins the 2018 LDC.
10. The Inspector who held the Inquiry in 2018 and granted the 2018 LDC appears to have derived his conclusion that there were 2 caravans on the site that were used on an all-year-round residential occupation primarily on the evidence given by two witnesses. In relation to seasonal occupation, the Inspector was presented with a range of anything from 25 to 50 caravans that were consistently occupied throughout the period April to October. The Inspector ultimately accepted that there was sufficient evidence to show that 25 of these caravans had been so occupied in excess of 10 years from the date on which the enforcement notice had been issued. The Inspector arrived at that conclusion solely on the basis of rental incomes and not on the physical condition of the caravans.

Material changes in circumstances

11. There have been two material changes in circumstances relating to the appeal since the application for the LDC was made.
12. In October 2023, the Council granted a LDC for the continued use of a building for manager's accommodation ancillary to the use of the land as a caravan site. That building was subsequently destroyed by fire, and the shell of that building remained on the site at the time of my site visit.
13. The other material change in circumstances is that in November 2021 the Council issued a Site License pursuant to the 1960 Act. The Site Licence was subject to conditions, including a condition that the use of the site shall be in accordance with the LDC dated 15 June 2018. The Site Licence did not specify a maximum number of caravans that may be stationed on the site.

Legislation and relevant case law

14. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.

It follows from this definition that a change of use of land is not, in itself, development for the purposes of the 1990 Act. For development to have occurred, there must be a material change of use.

15. The meaning of 'use' as defined in section 336(1) of the 1990 Act, in relation to land, does not include the use of land for the carrying out of any building or other operations on it. However, the concept of a material change of use is not defined in statute or statutory instrument. The basic approach adopted by the courts is that, for a material change of use to have occurred, there must as a matter of fact and degree be some significant difference in the character of the activities from what has gone on previously.

16. In *Hertfordshire CC v SSCLG & Metal and Waste Recycling Ltd* [2012] EWCA Civ 1473, the Court of Appeal held that:

“What must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in a such a change in the definable character of the use that it amounts to a material change of use”.

17. In *Broxbourne Borough Council v Secretary of State for the Environment and others* [1979] 2 All ER 13, it was held that an Established Use Certificate (EUC) shall be conclusive for the purposes of an enforcement appeal. The court held that the Secretary of State was entitled to find that there had not been a material change of use because the use being enforced against was not so different to that described in the EUC. It did not matter that the EUC was ‘silent as to the scope and intensity of the use’: there was no limit to where the use could take place within the site or the intensity of the use.
18. However, the judgment in *Broxbourne* goes on to say that the purpose of an established use certificate is clear. It does not render a use lawful. To that extent it is unlike a grant of planning permission. Therefore, if, for example, the use specified in an established use certificate is abandoned, it cannot lawfully be resumed. Its function is to render the specified use, *as long as it persists*, immune from an enforcement notice.” (emphasis added).
19. The appellant also cites the judgement in *Hannan v Newham LBC* [2014] EWHC 1424 (Admin) in this context, but this judgment raises no new point of law and I am not convinced that this case takes the point much further.
20. The courts have applied the judgment in *Broxbourne* to find that where the scope of a LDC is clear and unambiguous on its face, extrinsic evidence is irrelevant. The lawfulness of the use was ‘conclusively presumed’ as certified and a Local Planning Authority could not import limitations into the LDC.
21. The appellant cites the judgement of the High Court in *Ramsay & Anor v Secretary Of State For Environment, Transport & Regions & Anor* [2001] EWHC Admin 277 in relation to the fluctuation of uses. The example given in *Ramsay*, on which the appellant relies, is of land that is only used on a few occasions, such as where a football pitch is marked out throughout the whole season from August to May but only used for say 20 matches.
22. But there is another point made in *Ramsay* that it seems to me is of equal, if not more, relevance to this appeal. The High Court held that as a matter of law physical changes that have been made to the land are capable of being a relevant consideration in the decision maker's assessment of the character of the proposed use. The decision maker is not simply limited to looking at duration in every case. The High Court held that the decision maker's assessment of the character of a proposed use cannot sensibly exclude a factor which is both necessary for the proposed use to take place and has been created solely for that purpose.
23. In *Avon Estates Ltd v Welsh Ministers* [2011] EWCA Civ 553, it was held that the time limit on the permitted development can only be achieved by a condition to that effect, since that may be enforced in its own right even though no development takes place at that point. There are no conditions

imposed upon the use of the appeal site, this having been found to be lawful through an LDC, such that the proposed extension to the identified season does not involve new development for that reason.

The Planning Unit

24. The leading case for the determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. In *Burdle*, Bridge J suggested three broad categories of distinction:
- a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
25. Applying the principles established in *Burdle* to the facts of this case, I note firstly that the site is in the sole ownership of Wyldecrest Parks. I recognise that different occupiers may be in occupation of their caravans at different times but they have no legal interest in the land. Consequently, in *Burdle* terms, I consider that the site is in single occupation (by Wyldecrest Parks).
26. In the 2018 LDC, the Inspector found that here is one primary use taking place on that unit of occupation. There may be other activities taking place (for example, storage) but, if so, they were incidental or ancillary to that primary use.
27. The Council takes the view that each caravan in year-round occupation could be a separate planning unit. However, the 2018 LDC treated the site as a whole and did not specify where the two caravans found to be lawfully occupied on a year-round basis are or could be sited. Neither, for that matter, does it require that any of the caravans on the site have to be occupied on a year-round basis. It therefore seems to me that the correct approach is to treat the appeal site as single planning unit as the starting point.

Assessment

28. It is axiomatic that for there to be a material change of use, there must first be a change of use¹. It is therefore first necessary to establish whether would be a change of use in this case.
29. The use found to be lawful in the 2018 LDC was, in summary, the use of the land as a caravan site in accordance with the 1960 Act. The use found to be lawful was for a total of 27 caravans, two of which could be occupied on a year-round basis.
30. To my mind, this connotes a busy site with the potential for in excess of 50 people to be on site at any one time. This could include families with young

¹ *Wall & Ors v Winchester City Council & Anor* [2015] EWCA Civ 563

children and I understand that many of the caravans were occupied by agricultural workers employed in fruit picking. There could potentially be considerable activity on the site during the summer months, with the attendant noise levels (music, conversations, children playing, etc). There would be the paraphernalia associated with residential occupation, as well as the associated car parking.

31. There would also be the potential for a considerable number of vehicular and pedestrian movements into and out of the site, including deliveries. The site is located in the countryside and is accessed from a narrow lane. This lane only serves a few residential properties and some farm buildings, and is relatively lightly trafficked. The additional three caravans for all-year-round occupation would result in additional traffic movements along this country lane and would be particularly evident during the winter months (November to March), when it is likely that this level of activity at the appeal site would be much reduced.
32. During the hours of darkness, there would lights visible in those caravans that were occupied. In the summer months, this would potentially equate to up to 27 caravans at any one time. In the winter months, between November and March, when only 2 caravans could be occupied permanently, the amount of lights showing would be much reduced. Nonetheless, given the early onset of darkness in the winter months, there is no reason why the occupiers visiting their caravans in the winter months (but not staying overnight) would not display lights in the late afternoon/early evening.
33. When assessed against the use found to be lawful in the 2018 LDC, there would not be a significant change in character compared to the use now proposed. There would be the additional activity, residential paraphernalia and vehicle movements associated with three additional caravans to be occupied on a year-round basis. Compared to the existing potential for up to 27 caravans to be occupied during the summer months, an additional 3 caravans would not have a significant effect on the character of the use.
34. The difference would be more marked during the winter months, when the baseline would be two caravans permanently occupied plus much reduced levels of activity associated with those caravans that can only be occupied on a seasonal basis. Nevertheless, the character would remain essentially the same.
35. The same would equally apply to proposed extension at each end of the seasonal occupation. The level of activity associated with the use is likely to be reduced compared to peak summer levels but, even if it were not, the character of the use would not change.
36. I find that, as a matter of fact and degree, there would not be a change in the overall character of the use and therefore no material change of use when assessed against the use found to be lawful in the 2018 LDC. In that respect, this situation is similar to that in the appeal relating to Romansleigh Holiday Park (APP/X1118/X/20/3249504) in which the Inspector concluded that there could be no 'increase' that would lead to a material change of character, and thus a material change of use. The only difference is that, in this case, there is 'base figure' against which such a change might be assessed.
37. I am not, however, satisfied on the evidence before me that the use found to be lawful in the 2018 LDC was the use taking place on the date on which the

application for the LDC subject to this appeal was made (March 2010). In *Broxbourne* terminology, I am not satisfied that the use found to be lawful in the 2018 LDC still persisted at that time. This is due to the condition of the caravan site and some the caravans stationed there. An assessment of the character of the use in March 2020 therefore poses a different set of questions compared to an assessment against the use found to be lawful in 2018 LDC, and may well result in a different answer.

38. In his evidence at the Hearing, Mr Hester indicated that he has been familiar with the appeal site from 2009 and that the condition of the site has steadily deteriorated since then. Indeed, in giving his evidence to the Inquiry held in January 2018 that led to the LDC being granted, Mr Hester refers to a site visit he made on 6 May 2010. His evidence to that Inquiry was that some of the caravans were, in his view, in poor condition and "not having the appearance ofcaravan park houses, which....would be expected to have a more residential appearance and character"². I note that almost exactly eight years had passed between his site visit in May 2010 and the date of the Inspector's site visit on 4 May 2018.
39. The Inspector who held that Inquiry does not record his own observations of the condition of the caravans at that time. The next indication of the condition of the caravan site is therefore to be found in the Decision of the previous Inspector for this appeal, dated 31 August 2022.
40. In paragraph 25 of his Decision, the Inspector records that:
- "I estimated there were about 30 caravans but the land was in a very poor environmental condition, several caravans were burned out, others were dilapidated beyond any possibility of occupation, whilst a few could have been occupied."
41. Then, in the next paragraph, the Inspector records that:
- "I saw no buildings as such, although among the caravans were several structures, either recognisable as former caravans but now so dilapidated they could not be described as such, or open structures that may have been used (possibly still) for a communal kitchen by the occupants."
42. In paragraph 27 of his Decision, the Inspector observes that:
- "Some caravans in a better condition might have been awaiting repair or being stored and awaiting future occupants. Other storage was taking place, eg several fridges stacked on top of each other. Some of this activity might have been ancillary to the permitted 2028 LDC use, however I found several caravan structures to be beyond repair and were simply being stored on the land, some overgrown by vegetation. Clearly, they had not been moved in several months or years. The use of the land for storage is a separate use from its use for residential purposes. Given, in several instances, their surroundings and extremely poor environmental condition, they may well have been there at the time of the LDC application."
43. Finally, paragraph 28 of his Decision, the Inspector records that:

² Paragraph 74 of the Inspector's Decision dated 15 June 2018.

“Evidently there had also been a small group of buildings, caravans or other structures (it was difficult to tell as they were completely burned out) close by the entrance in the south-east corner of the appeal site. Other than the vestiges of the structures that had a profile, there were piles of rubbish, waste materials deposited on the site from burning, including timber, pipework, corrugated iron and other metalwork. This deposit of waste materials extended beyond the footprint of the former structures and whilst it was in the vicinity of the latter, it was not physically separated from the rest of the site. The waste has clearly subsisted for a substantial period. Given the spread of ruinous structures and rubbish across the site I do not recognise any smaller unit as the site of activity which is a separate use physically and functionally”.

44. For the avoidance of doubt, I do not adopt the previous Inspector’s finding that the use of the land for storage is a separate use from its use for residential purposes. The use of the land for storage connotes items (including caravans) brought onto the site for the purposes of being stored there for later use on the site itself or elsewhere. In that context, I had the benefit of the explanation from Mr Preston that the ‘white goods’ present on the site were stripped out from various disused caravans and/or structures for scrap value.
45. I have recounted the observations of the previous Inspector at some length because they illustrate the condition of the site only some two years or so after the date on which the LDC was made. This is evidence that the condition of the site may have deteriorated since the 2018 LDC.
46. The situation was essentially unchanged at the time of site visit. There was a small enclave of four, or possibly five, caravans in the north-east corner of the site that exhibited all the signs of being occupied. This little enclave was neat and tidy, with the grass cut and the path (paving slabs) clear of vegetation. There was residential paraphernalia in evidence, and signs of activity as the occupier(s) moved around the space.
47. But this was in complete contrast to the remainder of the site. There were several caravans that showed no sign of being occupied and which appeared to be dilapidated beyond any possibility of repair and occupation. Just to the east of the enclave were the burnt-out remains of three caravans previously used as communal cooking facilities. Nearby were further caravans, hidden under trees or obscured by vegetation. Towards the eastern end of the site was the previously mentioned pile of ‘white goods’. These were in an area that was heavily overgrown and obviously little used. There were randomly placed or discarded items everywhere on the site.
48. On the southern boundary was a further line of caravans that appeared to be unoccupied, the ground around these being overgrown. In this area were the burnt-out remains of the former washroom block that once provided laundry, shower and toilet facilities. In the south-east corner is the burnt-out shell of the building formerly used for manager’s accommodation. There is a metal security fence across the frontage of the site which, whilst it does not entirely prevent access to the site, gives the strong impression that the site is unused and should not be entered. This impression is reinforced by the absence of cars in the parking area at the front of the site³ and/or evidence of cars being parked within the main body of the site.

³ There was only one vehicle parked there at the time of my site visit, and this was a commercial van.

49. Overall, the character of the site at the time of my site visit was that of a use that that was largely inactive/dormant and in decline. The site had a forlorn feel. For the want of a better phrase, the whole site had a 'Mary Celeste' quality to it. It had none of activity and 'busyness' that I would associate with a caravan site especially as my site visit was at the height of summer, in the fruit picking season and in the school holidays, when it may be expected that this caravan site would be at its busiest. My site visit was in daylight hours but this lack of activity would have been evident during the hours of darkness when, compared to a possible 27 caravans on site all showing lights, large parts of the site would be completely unlit and in darkness.
50. I do not understand the use to have been abandoned: the activity in the small enclave in the north-east corner of the site and the application for the LDC for the use of the building for manager's accommodation are testament to that. Nevertheless, as a matter of fact and degree, that small enclave of residential occupation is functionally separate and distinct from the remainder of the site, and is occupied for different and unrelated purposes. Consequently, overall, the character of the site at the time of my site visit was not that of the use found to be lawful in the 2018 LDC. To use *Broxbourne* terminology again, I am not satisfied on the balance of probability that the use found to be lawful in the 2018 LDC still persisted at the time of my site visit.
51. In that context, I go back to the references in the 2018 LDC to 'residential occupation' and 'caravan site in accordance with the 1960 Act'. At the time of my site visit, the majority of the site was not in residential occupation and was not capable of being so in its then condition. The creation of a separate enclave and its use for residential occupation by just four or five caravans is therefore inconsistent with the terms of the 2018 LDC.
52. Consequently, as a matter of fact and degree, for the reasons set out above I conclude that there has been a definable change in the character of the use of the land. A material change of use has therefore occurred.
53. I am fully mindful that my site visit was over four years after the date on which the application for the LDC was made. Uses can and do fluctuate in intensity over time and it follows that in March 2020 the character of the use may have been different to that at the time of my site visit. I am particularly mindful that the Coronavirus pandemic hit almost immediately after the LDC application was submitted and that this may have had a significant effect on the level of occupation and therefore the character of the use.
54. However, the poor condition of the site at the time of my site visit (and as recorded by the previous Inspector) goes beyond a mere fluctuation in the level of activity on the site. Only a small part of the site remained in residential occupation. The remainder of the site was clearly disused and had been for some time. The burnt-out communal cooking facilities, the burnt-out washroom block and burnt-out managers accommodation, are not symptomatic of a use in fluctuation. In *Ramsay* terms, these facilities would have been necessary for the use as caravan site to take place when operating at the level found to have been lawful in the 2018 LDC and had been created solely for that purpose. The current condition of these facilities is more symptomatic of a use that is in decline and that is now operating at a level well below that found to be lawful in the 2018 LDC. This impression is reinforced by the security fence across the frontage of the site.

55. This is therefore the opposite to the position expounded in *Ramsay*. It is not akin to a football pitch/stadium which is available for use at any time but which in practice is only used very occasionally. Some of the physical features of the site necessary for the proposed use to take place at the level found to be lawful in the 2018 LDC (the communal cooking facilities, the washroom block and manager's accommodations) are no longer present, whereas physical features that prevent the use operating at that level (the general poor condition of the land and the metal security fence) are present.
56. The evidence before me paints the picture of a downward trajectory in the condition of the site from around 2010 onwards. The observations of the previous Inspector, made some two years after the LDC application was made, tell a similar story to the findings on my own site visit. By the date on which the LDC application was made, the condition of the appeal site was already on that downward trajectory.
57. In an LDC application/appeal made under section 192 of the 1990 Act, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made. In this case, the appellant has not provided any evidence to show that the character of the use on the date the application was made was that, or even close to that, of the use found to be lawful in the 2018 LDC. For example, I have been provided with no photographs of the site at that time: no survey or plan to show the number of caravans that were occupied: no invoices or receipts for rent (as the Inspector for the 2018 Inquiry had before him); and no sworn affidavits or statutory Declarations describing the site at that time.
58. I find that the appellant's evidence is not sufficiently precise and unambiguous on its own to show, on the balance of probability, that the proposed use would have been lawful on the date on which the application was made. I do not have the evidence before me to make an informed comparison between the character of the use found to be lawful in the 2018 LDC and character of the use on the date that the LDC application was made. The appellant has therefore not discharged the burden that falls upon him.

Conclusion

59. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the stationing of up to 5 caravans for all year round residential occupation and up to 25 caravans for residential occupation during the period 1st March and 30th November each year at Wass Drove Farm, Wass Drove, Westmarsh, Canterbury CT3 2LT 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 Freer
INSPECTOR

APPEARANCES

For the appellant

Mr J Preston

Wyldecrest Parks

Mr Ben Eiser MRTPI

Planning Agent

For the Local Planning Authority

Mr Vic Hester

Planning Officer