



Appeal Decision

Inquiry Held on 18 April 2023 and 9 and 10 July 2024

Site visit made on 19 April 2022 and 8 July 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Appeal Ref: APP/P1425/X/20/3258200

Downland Park, Court Farm Road, New Haven, East Sussex BN9 9DJ

- 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 Anne Barney against the decision of Lewes District Council.
 - The application Ref LW/20/0247, dated 24 April 2020, was refused by notice dated 3 July 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 is sought is: Use of land as a caravan site without restrictions or conditions.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

2. I have adopted the description of the proposed use from the signed Statement of Common Ground.
3. The appeal procedure was changed following my accompanied site visit in April 2022, with an Inquiry scheduled for April 2023 to hear the evidence of the parties. At that event, a significant number of interested parties attended which meant the venue had insufficient capacity. The Inquiry was therefore adjourned, with evidence unable to be heard until July 2024. I also made a further unaccompanied site visit prior to the resumption of the Inquiry.
4. My decision relates solely to the lawfulness of the proposal. The planning merits of the proposal, planning policy considerations or other constraints are therefore not relevant to my assessment. Similarly, the rights conveyed by a site licence or other Acts governing the site or occupiers are not matters before me. Accordingly, unless relevant to the main issue below, I am unable to consider representations relating to the proposal on wider planning or other grounds.

Main Issue

5. The main issue is whether the Council's refusal to grant a certificate of lawfulness for use of land as a caravan site without restrictions or conditions was well founded.

Reasons

6. The appeal site amounts to approximately 1.18ha and currently accommodates the stationing of 29 residential caravans and associated structures.
7. The difference between the parties is the Council considers the operative planning permission governing the appeal site to be from 1986, which permitted permanent residential occupation of a caravan site (the 1986 permission¹). The appellant however considers the operative permission to be a later permission, granted on appeal, which also related to permanent residential occupation of a caravan site (the 1989 permission²).
8. There is no dispute between the parties that the 1986 permission related to the appeal site and that it contained a condition restricting the number of caravans to 28. This was varied in 2003 to allow for 29 caravans.
9. The 1989 permission contains no such restrictions or conditions. Ambiguity however arises because a copy of the site plan for that application, and therefore the area to which it related, cannot now be obtained.
10. Given no such site plan can be obtained, the evidence cannot be precise and unambiguous. That is however not the relevant test. Rather, it is for the appellant to demonstrate on the balance of probabilities that the site was included and therefore the subject of the 1989 permission. In other words, this is to say that it was more likely than not to have been included.
11. Following earlier planning permissions and changes of ownership, by 1984 a holiday caravan site was in single ownership amounting to 6.55ha. This included sites previously described as Newhaven Downland Caravan Park and Meeching Court Caravan Site. The 1986 permission for permanent residential use then related to an area of just over 1ha within that total 6.55ha area.
12. Whilst I accept that within the 1986 documentation there was an intention to create and operate a completely separate mobile home park, there is very little evidence this was then actually the case. No part of the site has ever been known as 'The Drive' and there is no separate access point from Court Farm Road. The evidence is that the only dividing fencing or separation introduced was when the appeal site was sold into separate ownership in the early 1990's, and even this does not apply to the mobile homes which continue to be accessed from what is now known as Newhaven Heights.
13. In 1987, storms hit the south-coast which caused significant damage. This included the caravan site; however, the evidence is that the mobile homes arising from the 1986 permission were largely undamaged, presumably because of their more substantial construction. It is then not disputed that this prompted the site owner to review how they wished to re-populate the remainder of the site and likely resulted in the planning application that led to the 1989 permission for permanent residential use.

¹ Council Ref LW/86/0391

² Appeal Ref T/APP/P1425/A/88/92571/P5

14. The planning application form leading to the 1989 permission described the address of the application site as Downland Caravan Park and the area of the application site to be 6.55ha. The Officer's report also states the site was 6.55ha and the Council's Proof of Evidence cites 6.5 hectares.
15. The Inspector's decision letter then confirms the appeal was against a refusal of planning permission relating to land known as Downland Park and that the application site related to a single caravan site known as Downland Park which occupies an area of about 6.55ha.
16. I therefore find the factual statements contained in the opening paragraphs of the Inspector's decision letter particularly instructive because this confirms, as the decision taker as opposed a party to the proceedings, the appeal before them.
17. It also confirms, amongst other things, the corrected description, and therefore the appeal related to the continuance of use without compliance with the terms of two separate conditions imposed on different planning permissions at different times. Indeed, it is confirmed that those permissions gave rise to the continued use of two adjoining parcels of land as caravan sites, which had since been united to comprise a single caravan site.
18. The decision letter then follows logically from that point, with reference to the site amounting to 6.55ha, being the combined size of both the appeal site now before me and the wider caravan site. That combined size is also common ground between the parties. Purely descriptive words are then used about the site or descriptors such as adjoining or adjacent within the decision letter, and nowhere is express reference made to the exclusion of the appeal site now before me. This is again consistent with the application form, and indeed other documentation, unequivocally stating the site to be 6.55ha.
19. It therefore seems highly unlikely that all the parties to the appeal, as well as the Inspector at the Inquiry, were fundamentally wrong about the size of the site. I therefore do not accept that because a mistake was seemingly made in respect of the size of the site in two earlier planning applications, it follows that a mistake was made here.
20. It was suggested to me in evidence that because of the single ownership of the site the entirety had been correctly identified on the plans for the 1989 permission, but because part already benefitted from the desired permission, it was not the focus of the appeal. It may also have simply been included within the red-line of the application site by mistake, as it might otherwise be regarded as illogical and duplicative, but nevertheless it would have become the operative permission. In any event, whilst the appeal site already had the benefit of the 1986 permission, it had been united with the wider site and there is nothing inherently unusual about that permission area being included within a later permission area, whether it needed to or not.
21. I appreciate the Officer's report refers to the application site as covering the major part of Downland Park caravan site, with the inference being the appeal site before me is the minor part, but it then also refers to the site extending to some 6.55ha. These references cannot therefore be mutually compatible, particularly as reference is later made to the 1986 permission as a small section of the overall 6.55ha site.

22. The 1989 decision letter is then reasonably silent in respect of the 1986 permission in that it neither records the site is excluded or otherwise addresses the planning conditions pertaining to it. Inferences can be drawn where it is recorded that there are no restrictions as to the maximum number of units allowed and that occupation on a permanent basis was not permitted, as well as other descriptive words, which would be incorrect respect of the appeal site before me. Such inferences are broadly persuasive.
23. However, it would have been a significant error for the Inspector to have failed to record that the 1986 permission area fell outside the 6.55ha that was clearly being considered, given the site was within the same ownership and not separated at that time. It would then have reduced the application site area by more than 1ha. On balance, I find it more likely than not that the site area would otherwise have been corrected and explanation given in the 1989 decision letter as to why a correction had been made, which would have very likely involved confirmation about the exclusion of the 1986 permission area.
24. I therefore recognise there are some contradistinctions and incompatibilities in the documentation from that time, including in the 1989 decision letter. It is however inevitable that I must place greater weight on statutory documentation with factual statements, for example repeated confirmation of the site area, as opposed when descriptive words are used which can be interpreted differently or inferences drawn.
25. I appreciate there has been a history of the appellant having regarded the 1986 permission as operative, having made planning applications and not contested the alleged breach upon which an enforcement notice was issued. The Inspector in respect of the enforcement notice appeal was then only tasked with considering the planning merits of the development before them, not the issue before me. I therefore afford such history neutral weight in light of the evidence now before me.
26. In interpreting the relevant extrinsic material in the round, it is more likely than not that the 1989 permission included the appeal site now before me. I find this to be the natural and ordinary meaning of the words used, viewed in their particular context. To find otherwise would mean that the 1989 decision letter fell into significant error in respect of factual statements and that both the applicant and Council had done so as well. I can therefore only conclude that a reasonable reader with some knowledge of planning law would understand the permission in this common sense way. My findings are then consistent with the relevant case law that has been brought to my attention³.
27. The appellant has therefore discharged the necessary burden of proof to demonstrate the case on the balance of probabilities. It is then common ground that if I accept the 1989 permission to be operative to the appeal site, a certificate of lawfulness should be granted.

³ *Newbury v SSE* [1981] AC 578; *Trump International Golf Club v The Scottish Ministers* [2015] UKSC; *Lambeth LBC v SSCLG* [2019] UKSC 33; *Hillside Parks Ltd v SNPA* [2022] UKSC 30; *Telford & Wrekin Council v SSCLG* [2013] EWHC 79 (Admin); *R v Ashford Borough Council ex p Shepway District Council* [1999] PLCR; *UBB Waste Essex Ltd v Essex County Council* [2019] EWHC 1294 (Admin).

Conclusion

28. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use in respect of the use of land as a caravan site without restrictions or conditions 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.

Formal Decision

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

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Michael Rudd, Counsel instructed by Green Planning Studio Limited

He called Mr Matthew Green Green Planning Studio Limited

FOR THE LOCAL PLANNING AUTHORITY:

Mr Rowan Clapp, Counsel instructed by Lewes District Council

He Called Mr Martin Carpenter Enplan UK Limited

INTERESTED PERSONS:

Mrs Wendy Veck	Local resident
Mr Russ Patrick	Local resident

DOCUMENTS:

1. Signed Statement of Common Ground
2. Opening submissions on behalf of the Appellant
3. Opening submissions on behalf of the Council
4. Closing submissions on behalf of the Council
5. Closing submissions on behalf of the Appellant

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 24 April 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has demonstrated on the balance of probabilities that the proposed use of land as a caravan site without restrictions or conditions would be lawful.

Signed

Paul T Hocking

Inspector

Date: 30 August 2024

Reference: APP/P1425/X/20/3258200

First Schedule

Use of land as a caravan site without restrictions or conditions

Second Schedule

Land at Downland Park, Court Farm Road, New Haven, East Sussex BN9 9DJ

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 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 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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 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 my decision dated: 30 August 2024

by Paul T Hocking BA MSc MRTPI

Land at Downland Park, Court Farm Road, New Haven, East Sussex BN9 9DJ

Reference: APP/P1425/X/20/3258200

Scale: DO NOT SCALE

