



Appeal Decision

Site visit made on 22 October 2024

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal Ref: APP/G2245/X/24/3341980

Halls Green Activity Centre, Hale Oak Road, Sevenoaks Weald, TN14 6NQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Harlequin New Homes Weald Limited against the decision of Sevenoaks District Council.
 - The application ref 23/01402/LDCPR, dated 16 May 2023, was refused by notice dated 27 September 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 continued use of the site and buildings for recreational and leisure purposes in accordance with long established use, 94/01739/HIST and 05/01398/FUL and the construction of two buildings approved under planning permission reference 94/01739/HIST.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of the proposal from the application form as this includes the question as to whether it is still possible to lawfully construct two buildings that were included in the 1995 planning permission.

Background to the Appeal

3. There is a long and complicated history to the appeal site, most of which is not directly relevant, but some understanding of the history is needed to set the scene for the LDC. The site occupies a large area of what was mixed open land and woodland, the latter with a stream running through it, to the south and east of Hale Oak Road. It is a rough rectangle, running north-south, the eastern third contains a steep valley with the stream at the bottom and wooded slopes, the western two thirds are more open. The northern half of the site had a long-standing recreational use that was formalised by the Barnabus Trust, who received several planning permissions the most important of which was SE/94/01739¹. This revised a similar proposal in 1992 and permitted the construction of various accommodation and recreational buildings, which the plans showed were to be grouped loosely round the entrance to the site in the middle of the northern half of the site (at this point the southern half was separate from and unrelated to the uses in the northern half). This permission was subject to various conditions one of which, No8, said "*the accommodation and recreational buildings hereby approved shall*

¹ The appellants refer to this as 94/01739/HIST or the 1995 planning permission.

only be used in connection with the main recreational/leisure use of the site by the Barnabus Trust or by other such occupier to be agreed in writing by the District Planning Authority". It is two of the buildings authorised by this planning permission that were not built at the time that are subject to this LDC appeal, the 'focal building' and the 'games room'.

4. There is no dispute that this planning permission was implemented and some of the buildings erected. The Barnabus trust ran some sort of outward-bound style residential, recreational facility on the land. Various subsequent permissions were granted for alternatives to the 'focal building' and these contained conditions making them an alternative to that building. The Council clearly did not want to inadvertently authorise 2 'focal buildings'. These permissions show the Council thought the 'focal building' could still be lawfully built.
5. In 2005 planning permission² was granted for the change of use of the southern half of the site to outdoor adventure activities and the construction of a large (2 acre) lake for water sports. This was constructed and is still there today. This planning permission was subject to the condition "*the site shall not be available for use by the general public and shall be used solely by visitors to the existing Halls Green Centre in conjunction with the facilities provided on the adjoining site*".
6. It is clear by this point the whole site was being used for "outdoor adventure activities" and that is the lawful use of the site. It is also clear it was known as the Halls Green Centre, and it is to this 'Centre' the use of the southern half of the site was linked. Various other applications and planning permissions refer to it as the Halls Green Centre.
7. There followed two permissions³ in 2009 and 2010 for temporary portacabins the 2010 one to be used as a classroom and field study centre. Both were temporary for a period of 5 years secured by condition. These two portacabins are still in place today, although somewhat derelict.
8. In 2011 the whole site was sold to a Jewish College and Activity Centre. The appellants say they carried on using the site for outdoor recreation, but this is contested by local residents who say it was just a school for Jewish Studies, with little or no outdoor use.
9. In 2018 the Jewish School was no longer viable and they received planning permission⁴ for housing on the site. This involved the demolition of all the buildings in the northern section, that is the original Centre established by the '95 permission, and their replacement by 6 residential units. The appellants purchased all the land from the Jewish School and implemented the 2018 planning permission for housing which appears to be nearly complete. Now they want re-assurance they can still implement the '95 permission by constructing the two buildings mentioned above and can continue using the rest of the land outside the housing site for recreational activities.

² 05/01398/FUL, called the 1995 planning permission

³ SE/09/01883/FUL & SE/10/00846/FUL

⁴ 18/03418/FUL

Reasons

10. There are a number of contentious issues to comment on first. I have no doubt the LDC application covers the whole site as shown on the plans submitted with the application. The smaller red-line area referenced in the supporting statement to the application is presumably a mistake. But in any event does not override the plans submitted.
11. In terms of the planning unit, I have no doubt the whole of the land was originally a single planning unit but the implementation of the 2018 housing development has split the land into two planning units, the majority of the land forms the current appeal site, which is still a single planning unit. A large chunk of the original northern half of the land is now a separate planning unit containing the housing development.
12. The original '95 permission was implemented but never finished. Several buildings were not built, including the two subject to this appeal. This permission is therefore not spent and still exists to allow the construction of those buildings (subject to the discussion below). I agree with the appellants therefore that Pioneer Aggregates is relevant in that a planning permission that has not been implemented (or partially implemented), as long as they can still be implemented, cannot be abandoned.

The buildings

13. The first question is can the '95 planning permission still be implemented? Clearly no outstanding buildings can be erected pursuant to the '95 permission on the housing site. The grant of the 2018 planning permission overlays part of the '95 site and in terms of Hillside⁵ prevents the construction of any buildings from the '95 permission within its boundaries. That much is commonsense but Hillside went further. In that case a 1967 planning permission for a large housing development was partially implemented but subsequent parts of the site were developed either without planning permission or were subject to separate planning permissions. The Supreme Court held the original 1967 planning permission was thus no longer implementable. This appeal is different in that the 2018 planning permission is for a completely different development, not a variation of the '95 permission. Nevertheless the principles remain the same. As in Hillside, the '95 permission authorised a single scheme of development and could not be construed as separately permitting particular parts of the scheme to be built alongside development on the site authorised by an independent permission (the 2018 housing scheme).
14. It is impossible to implement the '95 scheme as a whole but is it severable? I would suggest it clearly is not. The activity centre was conceived as a whole with all the various buildings supporting each other and enabling the outdoor activities to take place. Obviously not all the buildings were essential individually but it makes no sense to build a focal building and games room, when there is no activity centre for them to relate to as all the other buildings have been demolished. Consequently, once the 2018 permission extinguished the activity centre the further implementation of the remaining buildings from the '95 permission relating to the activity centre becomes physically impossible. The Supreme Court endorsed the principle in Pilkington that the

⁵ Hillside Parks Ltd v Snowdonia NPA, [2022] UKSC 30

test of physical impossibility relates to the whole site (in this case the '95 site) not just that part the developer now wishes to build on. Therefore because the '95 permission is no longer implementable, because a good part of it has been sold off and built over, it cannot be relied on to authorise any further building.

15. Consequently, I consider, while it would be possible to build the games room it could not be done within the terms of the '95 permission. The focal building lies partly within the housing development site, and that alone makes it impossible to construct, but even if it were a few yards away, it would be caught in the same way as the games room.

The use of the land for outdoor recreation

16. Turning to the use. It would seem there is no actual planning permission authorising the use of the northern part of the site for outdoor recreational activities. Because that use had been carried on since the Second World War it seems to have been accepted it was lawful. The southern half of the site, containing the lake, however, does have a planning permission. That is limited by the condition referred to above. That condition restricts use of the 'site' (the southern half of the current site) to visitors to the "*existing Halls Green Centre in conjunction with the facilities provided on the adjoining site*".
17. The appellant argues the buildings were ancillary to the use, and as the use, along with its outdoor facilities, can continue then the requirements of the condition tying the two parts of the larger site together can still be met. But the requirements of the condition are not just tying the two parts of the site together, but specifically linking use of the southern part to visitors to the Centre. I do not agree that the phrase 'Halls Green Centre' can be read as applying to the overall use of the site and that the buildings are merely ancillary to that use so that the 'Halls Green Centre' continues to exist without them. As there is no longer an "existing Halls Green Centre" then the southern site can no longer be used for outdoor recreation without being in breach of the condition.
18. As to the remains of the northern half of the site, I agree, the longstanding use of the land outside of the housing development remains for outdoor recreation as long as it has not been abandoned. The condition attached to the '95 permission is a red herring as it only ties the buildings to the use of the site by an entity agreed by the Council. As the buildings no longer exist the condition becomes otiose. Indeed the '95 permission is not relevant as it does not touch on the use of the land.

Abandonment

19. The appellant has helpfully worked through the various tests for abandonment as set out in the relevant court judgements. The physical condition of the buildings and site is the first test. The buildings have been sold off and demolished. But the appellant argues the outdoor facilities are the main point of the centre. Just because they have become overgrown does not mean the use cannot recommence with a bit of effort, and some outdoor uses do not require equipment or manicured grounds at all. Various decision letters have been referenced to support these contentions and I have no reason to disagree with them.

20. I looked around the grounds on my site visit. They had mostly been left to return to nature. The football pitch was still mown grass, if somewhat unkempt, but that was isolated from the rest of the northern part of the site by the housing development. The rest of the land to the east is the woodland valley. This is difficult to access because of the thick growth of brambles and difficult to move around in because of bramble growth. I saw the remains of various items of equipment which were originally part of an assault course or similar and some wooden platforms in the trees. These were all either rotted away, in a dangerous condition or completely overgrown. The wooden zip wire tower had been demolished some years ago, so there was nothing left of the outdoor leisure uses. It would take more than a bit of effort to recommence the use.
21. It is agreed that the permanent use of the site for recreational purposes had ceased at least by 2015 because at that time the Jewish School occupiers declared the site vacant. I presume this was a preliminary to their attempts to get residential planning permission. The appellant says an ad hoc use continued for 3 weeks a year up to 2018. It is not clear what this 'ad hoc' use was and the document containing it is not before me. There is also the question of what use the Jewish School made of the site. Third parties suggest it was only used as a retreat for the study of religious documents and from 2011 the outdoor activities fell into disuse. The period of non-use is therefore either 6 years, 9 years or 13 years.
22. The appellant argues there has been no intervening use as the Jewish School was permitted by the 2010 permissions for the portacabins. Actually these permissions were for the use of the portacabins for educational purposes as part of (and ancillary to) the main use as an outdoor activity centre. They do not authorise a separate educational use. If that is what the Jewish School used the site for from 2011 to 2015 then that was an unauthorised use that broke the continuity of the recreational use. No enforcement notice was issued, so there is no right to revert to the last lawful use.
23. Finally there is intention. Clearly the owners who sold to the Jewish School had no intention of continuing the recreational use, and it would appear neither did the Jewish School. It seems they undertook a marketing exercise to demonstrate the use was not viable in 2016 and again in 2018 and had no takers at either point. They argued the use was not viable and should be superseded by housing. An argument the Council agreed with. It seems they had no intention of resurrecting the now dormant use. The appellants bought the site in 2018 and 5 years later applied for the LDC. But at no point do they say they intend to restart an outdoor leisure use on the site. Indeed given the viability issues revealed by the previous owners this is not surprising, especially as now there are no buildings to support such a use.
24. None of these tests are definitive on their own but taken together they suggest to me the recreational activity on the northern part of the site was abandoned. The destruction of most of the buildings and the decay of the rest of the site would lead an informed passer-by to conclude the use was abandoned. The period of non-use is not long, but there has been no attempt to maintain or start up the use in the period. There would seem to have been an unauthorised use intervening and the intentions of the previous owners were certainly not to continue the use. Selling off the main hub of the site

with no thought how the rest of the site would operate without it is strongly suggest they had no interest in retaining the recreational use.

Conclusion

25. Bringing this altogether I conclude the '95 planning permission is not implementable and the two buildings cannot be lawfully constructed. The southern half of the site cannot be used for outdoor recreational pursuits without being in breach of the condition and the outdoor use on what remains of the northern part of the site has been abandoned or lost because of an intervening unauthorised use. Therefore an LDC cannot be issued.

Simon Hand

INSPECTOR