
Appeal Decision

Site visit made on 21 October 2024

by John Whalley

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

Decision date: 30th October 2024

Appeal ref: APP/E3335/X/23/3330298

Brean Sands Holiday Centre, South Road, Brean, Burnham-on-Sea TA8 2RJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990, (the Act), as amended by the Planning and Compensation Act 1991 against the non-determination by Somerset Council of an application for the grant of a certificate of lawful use or development.
- The appeal was made by Discover Brean.
- The application, reference 06/23/00002, by Discover Brean, was submitted to Sedgemoor District Council on 20 January 2023. It was validated on 30 January 2023, (Sedgemoor District Council was subsequently subsumed into Somerset Council unitary authority). The application was not determined.
- The Application for a Certificate of Existing Lawful Development, (LDC), was for the use of the accommodation blocks at Brean Sands Pontins shown in dark green on the plan attached to the application as short-term accommodation for Hinkley Point C construction workers, with a mix of longer-term occupants and those who are accommodated for a number of weeks.

Summary of decision: The appeal is not allowed. A certificate of lawful use or development is not issued.

Appeal property

1. The application and appeal site is the Pontins Brean Sands Holiday Park just east of South Road, Brean. The park comprises 685 residential chalets. The holiday park also includes a leisure complex, swimming pool, gymnasium, and a shop. Outdoor site facilities of play areas, car parking and ancillary green areas are set out between the chalets.

Application

2. Discover Brean describe themselves as the official tourism website for Brean, Somerset. Their LDC application concerns use of the holiday park as temporary accommodation for Hinkley Point C, (HPC), nuclear power station construction workers. The application had referred to proposed workers' accommodation use, (s.192(1)(a) of the Act). However, the use had started. The application was amended to describe it as an existing use, (s.191(1)(a)).
3. The new nuclear power station at Hinkley Point is currently being constructed by NNB Nuclear Generation (HPC) Limited, (NNB), a subsidiary of EDF Energy. They described it as a nationally significant infrastructure project currently requiring about 7,680 workers not already living in the local area to locate themselves close to the construction site. 940 workers have been accommodated at the Pontins holiday park site starting in November 2022.

Following use by HPC workers, originally set for 3 years, (letter HPC 8/8/22 to Sedgemoor DC – use from November 2022 to November 2025), the holiday park use would resume, although it appears NNB are seeking an extension to this 3 year period.

4. Discover Brean were concerned by what they saw as significant harm to local tourism businesses caused by the loss, albeit temporary, of the holiday park tourist facility. They made the application because the most recent advice to the Council had been that the change of use of the holiday camp to a use to accommodate power station construction workers would not amount to a material change of use of the site. Abnormally, their application was made in the hope it be refused on the basis that the use of the holiday park to accommodate construction workers was a material change of use and therefore unlawful. It was hoped the application would lead to the need for a change of use permission where conditions could be applied to control the new use.

Application history

5. The then Sedgemoor District Council, (abolished 1 April 2023 – subsumed into Somerset Council unitary authority), sought legal advice on the Discover Brean LDC application from law firm Womble Bond Dickinson as to whether the use of the holiday camp to accommodate workers engaged on the construction of HPC for an estimated period of 3 years would constitute development for the purposes of the Town and Country Planning Act 1990.
6. Womble Bond Dickinson's original advice of 8 August 2022 said it would be reasonable for Sedgemoor DC to conclude that the proposed use, if instituted, would be a material change of use and should therefore be authorised by a planning permission. They based that advice largely upon a presumed seasonality of the holiday camp use compared with the workers accommodation all year round use.
7. That suggested conclusion was contested by the planning manager of Hinkley Point and the owners of the holiday park. Hinkley Point obtained the view of Paul Shadarevian KC and Jack Parker of Cornerstone Barristers. Their conclusion, (9 September 2022), was that there was *"no evidence to suggest that the use of the Site for the Proposed Use might give rise to a change in the character of the use for planning purposes"*. That opinion was conveyed to Sedgemoor DC by a letter dated 22 September 2022 from the planning manager of Hinkley Point C.
8. Womble Bond Dickinson's supplemental advice of 30 September 2022 then changed their earlier advice following their consideration of additional information, taking the opposite view to that of 8 August, also noting that the holiday camp was not limited to seasonal use by any conditions. They now concluded planning permission was not needed. There would be no change of use.
9. An email letter from Sedgemoor DC dated 4 October 2022 to Andrew Goodchild NNB Generation Company said, amongst others: *"Given the lack of restrictions on the use of the site and considerations above it is the view of officers that the character of the site as a holiday camp and that of a worker campus would be deemed sufficiently similar in character in use for a material change of use not to occur."* It was said this advice represented the views of officers having regard to the information provided by EDF, relating to the nature and extent of

the proposed use and proposed works and the assumptions underpinning the predicted impacts of the proposed use. It was not to be taken as any formal determination of whether planning permission was required as there was then no formal application before the Council in terms of an application for a certificate of lawfulness or an application for planning consent.

Appropriateness of LDC application process

10. The Council said it was unusual for an applicant to invite a refusal to issue a lawful use certificate. They believed a coherent case could be made to show that the new use was lawful. But it was not for the Council to advance evidence on behalf the Applicant to enable a certificate of lawfulness to be issued, particularly where the Applicant wanted their application refused.
11. In my view, Sedgemoor District Council, and their successors Somerset Council, appeared somewhat discomfited by the LDC application by Discover Brean, indicated perhaps by a total of 8 requests to defer a decision. The delay led to the appeal being made against non-determination of the application.
12. The Council suggested the appeal be dismissed as, based upon the Applicant's case, it had not been demonstrated, on the balance of probabilities, the use of *"the accommodation blocks at Brean Sands Pontins shown in dark green on the attached plan as short-term accommodation for Hinkley Point C construction workers, with a mix of longer-term occupants and those who are accommodated for a number of weeks"*, was lawful.
13. NNB said the LDC application was not within the scope of s.191 of the Act. The appeal should be dismissed. They said s.191 showed that applications may be submitted to obtain a certificate confirming that a matter is lawful. It did not provide a procedure for a person to submit an application seeking confirmation that a matter is unlawful. Unlike an applicant seeking to establish lawfulness, such a person cannot be relied upon to support their application with all available evidence. A decision to refuse a certificate because of incomplete and inadequate evidence would achieve no practical objective. It would have no legal consequences. It would not and could not serve to establish that the use in question was unlawful.
14. NNB further said s.195 does not provide for persons to lodge an appeal of an application to seek to confirm that the matters which the application related to are unlawful, and that a certificate should not be granted. Taking such an approach was an abuse of process and not within the scope of s.195 of the Act. Any such appeal was thus inadmissible.

Considerations

15. The letters from the Planning Inspectorate dated 27 September 2023 to the parties stated, amongst others: *We have checked the documents submitted and confirm that the appeal is valid.* I have considered, in particular, the submissions of NNB that the LDC application was not within the scope of s.191 of the Act and that the appeal was outside the scope of s.195 of the Act and was therefore inadmissible. My view is that whilst there is substantial merit in the NNB objections to proceeding with the appeal, I do not dismiss this appeal on the basis of invalidity, nor indeed treat it as a nullity. I do nevertheless dismiss Discover Brean's LDC appeal.

16. Discover Brean's application for an LDC was made following wording in s.191(1) - *If any person wishes to ascertain whether* – apparently allowing them to make this application and any subsequent appeal. But the grounds of appeal submitted by Discover Brean as part of their appeal says: "*The Application submitted is a request that the application for a CLD be refused by Sedgemoor rather than approved as is the usual course.*". As NNB asserted, Discover Brean sought a confirmation of their view that the use of the Pontins holiday park as temporary accommodation for the nuclear power station construction workers was unlawful as that use was materially different to a holiday camp use.
17. I consider that Discover Brean's approach was perverse, (contrary to accepted or expected standard or practice), and ultimately futile. Perverse because s.191(1)(a) of the Act provides for applications by persons wishes to ascertain whether, (a), any existing use of buildings or other land is lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use The burden of proof to demonstrate lawfulness lies with the applicant. If the evidence of the applicant is insufficient to demonstrate lawfulness, a certificate of lawfulness will be refused. A decision to follow such an application would not provide any certainty of unlawfulness, merely that it had not, at that time and based upon the applicant's evidence been shown to be lawful. This section of the Act does not provide an appropriate route to attempt to confirm unlawfulness.
18. Discover Brean's application and appeal had been futile because, although Sedgemoor DC's original legal advice said that planning permission was probably required for the nuclear power station workers' accommodation at the Pontins holiday camp, that was later reversed, concluding that such use would be lawful. Also, there does not appear to have been any time at which either Sedgemoor DC or Somerset Council invited NNB to apply for planning permission for their project. Nor had the Council been minded to consider it expedient to issue an enforcement notice against the workers' accommodation use of the holiday camp, where that use started 2 years ago following a £2m investment by NNB to renovate and refurbish the camp. Had such a notice been issued and an appeal against it made, Discover Brean's concerns could have been more appropriately expressed to oppose possible appeals on grounds (c) and (a), for example, under s.174 of the Act.
19. I can understand Discover Brean's fears about the closure of the holiday camp and the worries of local traders who, at least in part, depend upon the business of holidaymakers from the camp and who have seen that trade drop significantly over the last 2 years. The Member of Parliament for Bridgwater Sir Ashley Fox said the Pontins site played a crucial role in the local economy as a designated tourism site, attracting visitors and supporting numerous jobs in the region. That is also recognised by Local Plan policy to support and improve tourism in Bream and Barrow, in particular by policies BH10 and D17. However, Pontins owners cannot be required to continue to trade as a holiday camp.
20. My conclusion is that Discover Bream's worthy efforts to help maintain and support local tourism were misplaced in their use of an application for a certificate of lawfulness under s.191(a) of the Act.
21. In coming to the decision to dismiss the appeal rather than deciding it being inadmissible as a matter of law as suggested by NNB, I note the concern expressed by NNB that it would set a dangerous precedent were it held that

such applications and appeals are valid. However, I would not expect to see others attempting to follow.

Decision

22. For the reasons given above I conclude that, had the Council refused to grant a certificate of lawful use in respect of use of the accommodation blocks at Pontins Brean Sands Holiday Centre, South Road, Brean, Burnham-on-Sea TA8 2RJ shown in dark green on the plan attached to the application as short-term accommodation for Hinkley Point C construction workers, with a mix of longer-term occupants and those who are accommodated for a number of weeks, that refusal would have been 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.

John Whalley

INSPECTOR