



Appeal Decision

Hearing Held on 10 October 2024

Site visit made on 10 October 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: 4th November 2024

Appeal Ref: APP/J0405/X/21/3287648

Wing Caravan Site, Wing Road, Wing, Buckinghamshire LU7 0LB

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Gerard O'Connor against Buckinghamshire Council.
 - The application 21/00082/NONDET is dated 18 December 2019.
 - 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 described as: "a caravan site for eight residential plots, vehicle plot, work area, an amenity block and additional landscaping subject to conditions 2, 5, 8, 10, 15 and 16 of planning permission reference 07/01648/ACC which enures only for the benefit of Aylesbury Vale District Council".
 - This decision supersedes that issued on 1 September 2023. That decision on the appeal was remitted for re-hearing and determination by consent order of the High Court.
-

Summary Decision: the appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Application for costs

1. At the Hearing an application for costs was made by Mr Gerard O'Connor against Buckinghamshire Council. This application is the subject of a separate Decision.

Procedural matters

2. The initial LDC application was submitted to Aylesbury Vale District Council as the Local Planning Authority at that time. Subsequently, the four District Councils in Buckinghamshire together with Buckinghamshire County Council ("the County Council") merged to become one unitary authority representing the entire county, known as Buckinghamshire Council. Any reference within my decision to 'the Council' is to be taken as Buckinghamshire Council.

Main Issue

3. Section 191(4) 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 of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a

description substituted by them, 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

4. In 2007, planning permission ("the 2007 permission") was granted (Council ref: 07/01648/ACC) for the "re-modelling and improvement of existing caravan site to provide eight residential plots, vehicle plot, work area, an amenity block and additional landscaping at Wing Caravan site." The 2007 permission followed an earlier planning permission granted in 1978 ("the 1978 permission") for the "establishment of gypsy site with 7 pitches and provision for the sorting of scrap metals and other materials."
5. The 2007 permission was made by the County Council who owned the appeal site at that time, and determined by the County Council under Regulation 3 of the Town and Country Planning General Regulations 1992 (the Regulations). Because of Regulation 9 of the Regulations, the 2007 planning permission enures only for the benefit of the applicant interested planning authority. Whilst Regulation 9 was repealed by the Town and Country Planning General (Amendment)(England) Regulations 2018, it continues to apply to planning permissions granted before 23 February 2018. The consequence is that the 2007 planning permission can now only enure for the benefit of Buckinghamshire Council.
6. The 2007 planning permission was implemented by the County Council, but the site was vandalised before the development could be completed. The outcome was that the amenity building which had been constructed on site was demolished, albeit its concrete base was left in situ. After this event, the County Council resolved not to spend any further money on the site and it disposed of the site in January 2014.
7. After the new owners took ownership of the land, development took place on the site in 2014. This included the provision of an internal loop road, the construction of eight concrete platforms for mobile homes with infrastructure ducts, the formation of a feature including a pond and building in the centre of the site, remodelling the landform of the site, and alterations to the access, including surfacing and the construction of brick splay walls and gates.
8. An application for a certificate of lawfulness of existing use was then refused in 2014. An application for planning permission followed. This sought the retention of the development that took place in 2014 and the retention of a residential mobile home park with eight permanent plots. This application was refused, and later dismissed at appeal.
9. The appellant purchased the land in 2018. The LDC seeks to establish that the 2007 planning permission remains extant, nothing more and nothing less. The appellant fully recognises that the permission enures only for the benefit of Buckinghamshire Council in accordance with Regulation 9 of the Regulations.

Reasons

10. The appellant relies on the judgment of the House of Lords in *Pioneer Aggregates (UK) Limited v Secretary of State for the Environment* [1985] 1A.C. 132, in which the House of Lords unanimously held that there is no principle, and no room for any principle, in planning law whereby a planning permission may be extinguished by abandonment. The primary reason given by the House of Lords was that Parliament has provided a comprehensive code of planning control and the courts should not introduce into planning law principles or rules derived from private law unless expressly authorised by Parliament or necessary to give effect to the purpose of the legislation. The clear implication is that only the statute or the terms of the planning permission itself can stop the permission enuring or the benefit of the land and of all persons for the time being interested therein.
11. In *Pioneer Aggregates*, Lord Scarman identified three 'classes' of case where "a number of reported judicial decisions which, upon first sight and before analysis, might seem to suggest that there is room in the planning law for a principle, or an exception, allowing the extinguishment of a planning permission by abandonment".
12. The first class is concerned not with planning permission but with existing use. This arose from the judgement in *Hartley v. Minister of Housing and Local Government* [1970] 1 Q.B. 41, which related to the resumption of a car sales use on a site where previously there had been two uses, namely car sales and a petrol-filling station. In *Hartley*, the Court found that as a matter of fact the previous use had ceased, having been abandoned by the owner or occupier of the land. But that was not a case of abandoning a planning permission: it was a case of abandoning a use of land.
13. The second class of case identified by Lord Scarman was described as that of the "new planning unit". In this class of case, Lord Scarman found that the existing use right disappears because the character of the planning unit has been altered by the physical fact of the new development.
14. The third class of case identified by Lord Scarman is where there are two planning permissions in respect of the same land. This situation had previously been considered in *Pilkington v. Secretary of State for the Environment* [1973] 1 W.L.R. 1527, in which the court held that the two permissions could not stand in respect of the same land, once the development sanctioned by the second permission had been carried out. The effect of implementing the second permission was to make the development authorised in the earlier permission incapable of implementation.
15. The principle established in *Pioneer Aggregates* is, in summary, that abandonment does not apply where planning permission is granted for operational development and is capable of implementation. This judgement also sets out that an existing use cannot be lost through election.
16. The principles in *Pioneer Aggregates* are well-known and long-standing, the judgment dating from 1984. More recently, the principles in *Pioneer Aggregates* were endorsed by the Supreme Court in *Hillside Parks Ltd (Appellant) v Snowdonia National Park Authority* [2022] UKSC 30. Indeed, the Supreme Court went further, confirming that there is no principle in planning law whereby a planning permission can be abandoned.

17. Applying the principles set out in *Pioneer Aggregates* to the facts of this case, there is firstly no dispute that the 2007 permission was implemented. This is therefore a situation whereby the principles established in *Pioneer Aggregates* are applicable.
18. The LDC does not seek to show that an existing use of the land is lawful. The first class identified in *Pioneer Aggregates* does not therefore apply in this case. I acknowledge the point raised by the Council, insofar as the LDC was submitted under section 191(1)(a) of the 1990 Act. That section relates to an existing use of land. However, the application sought establish whether the 2007 permission remains extant. That permission was for the use of the land as a caravan site. The LDC is therefore concerned with a planning permission for the use of land rather than just a use of land. This brings it firmly within the remit of *Pioneer Aggregates*.
19. The 2007 permission effectively superseded the 1978 planning permission. As such, as a matter of fact and degree, it did not result in the creation of a new planning unit. The second 'class' identified in *Pioneer Aggregates* therefore does not apply in this case.
20. As I noted on my site visit, in some places the works undertaken in 2014 sit directly on top of the works undertaken in implementing the 2007 permission. The works undertaken in 2014 are relatively minor and could be removed without difficulty to reveal the underlying works in relation to the 2007 permission. In that respect, the two permissions are not in any way inconsistent. The third 'class' identified in *Pioneer Aggregates* also does not apply in this case.
21. It follows that the circumstances in this case do not fall within any of the three 'classes' identified by Lord Scarman in *Pioneer Aggregates*. It is now long-established that the three classes identified in *Pioneer Aggregates* are the only circumstances in which a planning permission can be lost. Accordingly, the 2007 permission remains extant.
22. The Council has already accepted this. The Statement of Reasons set out in the Consent Order stated in terms in relation to Ground 1:

*"The Secretary of State accepts that the Claimant's Ground is made out, i.e. that the Inspector has erred in law in his approach to the principles set down in **Pioneer Aggregates UK v SSE** [1985] 1 AC 132. Specifically, the Inspector found that the use of the land had been abandoned at paragraph 36 of his decision letter. However, a use of land cannot be abandoned if it is established through a valid permission capable of being implemented according to its terms (per Lord Scarman at 145G of **Pioneer**)"*

The Consent Order dated 2 November 2023 was signed by Legal Services Buckinghamshire Council. In signing the Consent Order, the Council thereby accepted that a use of land cannot be abandoned if it is established through a valid permission capable of being implemented.
23. Furthermore, on 26 April 2024 the Council issued a Breach of Condition Notice (BCN) alleging a breach of Condition 2 of planning permission 07/01648/ACC (the 2007 permission). It is axiomatic that for any development to have been constructed otherwise than in accordance with a condition imposed upon a planning permission, that permission must (i) have been implemented and (ii)

remain extant. The issue of the BCN in relation to the appeal site is therefore an explicit acknowledgement by the Council that the 2007 permission has been implemented and remains extant.

24. The Council's case at the Hearing centred on the fact that the 2007 permission was determined by the County Council under Regulation 3 of the Regulations. In the Council's view, the 2007 permission was therefore a unique permission that can only enure for the benefit of the Council. As I understood the Council's position to be, this means that the 2007 permission is not extant in the sense that only the Council could implement it (or complete it) and therefore the appellant could not benefit from it.
25. As Lord Scarman said in *Pioneer Aggregates*, the clear implication is that only the statute or the terms of the planning permission itself can stop the permission enuring or the benefit of the land and of all persons for the time being interested therein. The 2007 permission is clear in stating that the development proposed was authorised by Buckinghamshire County Council to itself¹. The terms of the permission itself therefore stops the permission enuring for the benefit of the land. The appellant accepts this but at the Hearing declined to say the reasons behind the LDC application.
26. In any event, the Regulations are parasitic on the 1990 Act. There is no power to grant planning permission arising directly out of the Regulations. The 2007 permission is therefore equally subject to the principles set out in *Pioneer Aggregates* as any other planning permission. The fact that the 2007 permission does not enure for the benefit of the land is not one of the only three 'classes' stated in *Pioneer Aggregates* that might allow for the extinguishment of a planning permission.

Conclusion

27. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of a caravan site for eight residential plots, vehicle plot, work area, an amenity block and additional landscaping subject to conditions 2, 5, 8, 10, 15 and 16 of planning permission reference 07/01648/ACC which enures only for the benefit of Aylesbury Vale District Council at Wing Caravan Site, Wing Road, Wing, Buckinghamshire LU7 0LB 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

28. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Paul Freer
INSPECTOR

¹ The supporting statement to the LDC application refers to Aylesbury Vale District Council but, given the subsequent reorganisation of the County in a Unitary Authority, that is of no significance.

APPEARANCES

For the appellant:

Mr Gerard O'Connor

Appellant

Mr Michael Rudd

Of Counsel

Mr Matthew Green

Green Planning Studio

For the Local Planning Authority:

Ms Laura Lee Briggs

Solicitor

Ms Clare Grey

Principal Planning Officer



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 18 December 2019 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Permission 07/01648/ACC dated 9 August 2007 remains extant on the basis that a use of land cannot be abandoned if it is established through a valid permission capable of being implemented according to its terms, as set out by the House of Lords in *Pioneer Aggregates (UK) Limited v Secretary of State for the Environment* [1985] 1A.C. 132

Signed

Paul Freer
INSPECTOR

Date: 4th November 2024
Reference: APP/J0405/X/21/3287648

First Schedule

Use as a caravan site for eight residential plots, vehicle plot, work area, an amenity block and additional landscaping subject to conditions 2, 5, 8, 10, 15 and 16 of planning permission reference 07/01648/ACC which enures only for the benefit of Aylesbury Vale District Council.

Second Schedule

Land at Wing Caravan Site, Wing Road, Wing, Buckinghamshire LU7 0LB

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 4th November 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

Land at: Wing Caravan Site, Wing Road, Wing, Buckinghamshire LU7 0LB

Reference: APP/J0405/X/21/3287648

Scale: Not to Scale

