
Appeal Decision

Site visit made on 30 August 2024

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 19 November 2024

Appeal Ref: APP/P0240/X/23/3318574

30 Stanbridge Road, Great Billington LU7 9JH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Rose Bowers against the decision of Central Bedfordshire Council. The application ref CB/23/00073/LDCE, dated 6 January 2023, was refused by notice dated 3 March 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 LDC is sought is described in the application form as follows: the change of use of land to a caravan site, by siting caravans for human habitation and land used in conjunction with the siting of those caravans, Caravan Sites and Control of Development Act 1960.
 - An application for costs is made by the appellant against the Council. The costs decision is at the end of this appeal decision.
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Decision

1. The appeal is dismissed.

Inspector's Reasons

2. Section 191(2)(a) of the Act explains that uses and operations are lawful at any time if either no enforcement action may be taken in respect of them, because they did not require planning permission or because the time for enforcement action has expired, or they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The latter does not apply in this case as far as I am aware and there is no dispute that planning permission would normally be required for the use of land as a caravan site. It is also agreed that the time limit relating to when enforcement action may be taken in respect of an unauthorised use of land is set out in s171B(3) of the Act and is 10 years.
3. It therefore follows that the appellant needs to show, that, on the balance of probabilities, the unauthorised change of use of land to a caravan site, by siting caravans for human habitation and land used in conjunction with the siting of those caravans¹ commenced on or before 6 January 2013 and has continued for a period of 10 years without significant interruption. Any continuous 10-year period is relevant. The appellant is aware that the burden of proof in an appeal of this nature lies with them.
4. The Council refused the application on the basis that insufficient evidence has been submitted, and the evidence presented is ambiguous and imprecise. An appeal against a refusal to grant an LDC is confined to reviewing the Council's decision, to establish

¹ The expression "caravan site" means 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 having regard to Sections 1(4) and 29(1) of the Caravan Sites and Control of Development Act 1960, as confirmed in Section 336(1) of the Town and Country Planning Act 1990.

whether the refusal to grant a certificate was well founded; that is, the decision itself, not necessarily the reasons for it.

5. The site is located to the south of Stanbridge Road and is to the east of No.28. There are other caravan sites and commercial activity in the street scene. The LDC application relates to the land outlined in red on the site location plan and for convenient shorthand, I will refer to it as "the LDC area".
6. The bundle of evidence provided by the appellant and local planning authority extensively covers the site's planning history. There is no point repeating that history here. However, relevant is a planning permission granted in 1994 on appeal for the stationing of two caravans on former grazing land (SB/93/00633). Other applications for operational development have been granted by the Council. That said, the red line plan permitting the residential caravan site was tightly drawn around the mobile home and did not extend further into the site. The land around and about was either used for grazing purposes or some kind of ancillary and or incidental purpose. The latter being functionally linked to the use and occupation of the mobile home. Applying *Burdle*², it is apparent to me that the land owned by the appellant's family forms the unit of occupation.
7. Essentially, the appellant's claim is that the LDC area's use as a caravan site, by siting caravans for human habitation and land used in conjunction with the siting of those caravans, commenced before the relevant date. In support of that claim, statutory declarations have been tendered. Other documentary information, such as letters from the school, site license and council tax bill, have been provided. However, before evidence of the claimed use is assessed, there is a fundamental issue that first needs addressing.
8. S191(6) provides that the lawfulness of any use for which an LDC is in force under s191 shall be conclusively presumed. Thus, the use described in an LDC issued under s191 is shown to have been protected from enforcement action on the date of the application, and it will remain so unless and until there is a material change in circumstances. It is not open to an applicant to pose a general enquiry as to what is or might be lawful. Accordingly, and since an LDC cannot be subject to conditions, an application must relate to a specific use. That approach is supported in the Planning Practice Guidance, at section 17c-010-20140306.
9. Against that background, I find the appellant's description of the existing use lacking in sufficient clarity and precision. The description for which an LDC is sought does not clearly describe the activity that was, on the evidence, carried out during the 10-year period. It seeks a certification for a general caravan site, by siting caravans for human habitation and land used in conjunction with the siting of those caravans. It does not, for example, describe the use as the stationing of x caravans for residential use on x pitches, which would be clearer and mark the level of use at the date of the LDC application. The description provided by the appellant therefore has the potential to cause significant interpretational problems as there is no indication of how many or type of caravans were stationed on the relevant planning unit at the date of the application.
10. Under s191(4) of the Act there is discretionary power to modify the description of the existing use. I may exercise this power on appeal and issue an LDC for any use that is shown to be lawful on the facts and evidence, rather than refuse a certificate based on some error or misunderstanding. This being a pragmatic approach given the appellant could reapply to the Council should they better specify the existing use and overcome any perceived deficiencies in the evidence.

² *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207.

11. There is a problem. Neither the application form nor any supporting documentation clearly sets out the number or type of caravans. The statements and documentary evidence presented thus far is incomplete and lacking in sufficient clarity as to the nature and scale of the claimed use as a residential caravan site. For example, the aerial images, which is supplied by the appellant, does not fully cover the period between 2013 and the date of the application. Statutory declarations do not provide specific detail about the level or intensity of the use. I cannot be certain as to the date of the change in the use of the LDC area and how it has continued thereafter without significant interruption.
12. I am not satisfied that the evidence presented allows me to exercise my discretionary power to issue a certificate for the residential caravan site use of the LDC area without causing future interpretational issues. The evidence presented is not specific enough as it does not specify the number of caravans and level of use across the relevant planning unit for me to conclude that the existing use is lawful at the date of the application.
13. The agent makes much of the Council not providing documentary evidence: they also provide an explanation of what the courts have said about the standard of proof. However, the burden solely lies with the appellant. The precision and specificity required in the description of the existing use is a matter for the appellant and their professional representative to consider.
14. I have also considered the other appeal decision submitted in the bundle, but none assist the appellant's case. Appeal ref APP/E2001/X/13/2196915 is for an existing use of land as a caravan site (single caravan). Appeal ref APP/Y9507/X/15/3005884 relates to the stationing of an additional residential caravan and was made under s192(1)(a), not s191(1)(a). I see that in dismissing appeal ref APP/F2415/X/16/3155396, the Inspector raised concerns about the specificity of the existing use description as ""Siting of caravan on disused quarry". In that case, the Inspector cites *Woodspring DC v SSE and Goodall* [1982] JPL 784 and *Hammond v SSE and Maldon DC* [1997] EWCA Civ 888. Although related to enforcement notice alleging stationing of caravans, the need for specificity is also discussed in the judgments.
15. Drawing all the above points together, I find the description of the exiting use for which an LDC is sought is too general and vague. The evidence presented does not show to me the nature or scale of the claimed use of the LDC area as a caravan site, because the existing use is not specific enough. I am bound to conclude that, on the available evidence, the appeal should be dismissed.

A U Ghafoor

Inspector

Costs Decision

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Rose Bowers for a full award of costs against the Central Bedfordshire Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for the change of use of land to a caravan site, by siting caravans for human habitation and land used in conjunction with the siting of those caravans, Caravan Sites and Control of Development Act 1960.
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Decision

1. The application for an award of costs is refused.

Inspector's Reasons

2. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The Planning Practice Guidance (PPG) advises that, awards against a Council may be either procedural or substantive.
3. I do not consider the respondent misdirected itself in assessing the evidence at first instance. There is nothing to indicate to me that a higher "beyond reasonable doubt" test has been applied to the evidence. My decision might come as a surprise and will be disappointing. However, I have carefully considered the evidence with a view to exercise my discretionary powers under s191(4) of the Act.
4. My decision explains why I have arrived at a similar view to that of the respondent. This primarily relates to the description of the existing use given in the application form which, incidentally, forms a golden thread through the information submitted. The quantum of the evidence does not permit issuing an LDC for a modified description, because the appellant's own evidence is too imprecise. As I have already said elsewhere, the applicant can reapply should better evidence come to light.
5. I consider that the Council's stance and approach combined with its assessment of the LDC application has not resulted in procedural or substantive unreasonableness thereby causing the applicant to incur unnecessary or wasted expense in the appeal process. The respondent submitted evidence to substantiate its case on appeal.
6. Based on all the relevant circumstances, I conclude that on the balance of probability, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs, partial or full, is unjustified in this case.

A U Ghafoor

Inspector