
Appeal Decision

Site visit made on 23 July 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: 20th November 2024

Appeal Ref: APP/U2235/X/23/3332814

Rosewood Farm, Scragged Oak Road, Detling ME14 3HL

- 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 & Mrs Jimmy and Julie Hickmott against Maidstone Borough Council.
 - The application Ref. 23/504942/LAWPRO is dated 30 October 2023.
 - 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 or development is sought is the siting of a caravan for use ancillary to the lawful agricultural use of the land.
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Decision: the appeal is dismissed

Application for costs

1. An application for costs was made by Mr & Mrs Jimmy and Julie Hickmott against Maidstone Borough Council. An application for costs was also made by Maidstone Borough Council against Mr & Mrs Jimmy and Julie Hickmott. These applications are the subject of separate Decisions.

Procedural matters

2. The Council considers that the LDC application subject to this appeal was not valid on receipt, this on the grounds that it was not accompanied by a completed CIL 1 Form. The Council therefore considers that there is no valid application to be determined and consequently no appeal can be lodged in relation to that application. However, the Council has indicated that, had it been in a position to do so, it would have refused the LDC on the grounds that the applicant had not shown that the use of the caravan was ancillary to the lawful agricultural use of the land.
3. The appeal therefore raises one procedural point and one substantive point. The procedural point concerns whether the LDC application was itself not valid, such that there is a right of appeal associated with it. The substantive point, namely whether the stationing of the caravan constitutes development for the purposes of Town and Country Planning Act 1990 (1990 Act), would only fall to be considered if the appeal succeeds on the procedural point.

Reasons

4. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, 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.

Whether the LDC application was itself valid

5. Section 62(3) of the 1990 Act provides that a local planning authority may require that an application for planning permission must include:
 - (a) such particulars as they think necessary
 - (b) such evidence in support of anything in or relating to the application as they think necessary.
6. Article 11(1), Part 3 of the Town and Country (Development Management Procedure) (England) Order 2015 (DMPO) provides that when the local planning authority with whom the application has to be lodged receive:
 - (a).....
 - (b).....
 - (c).....
 - (ca)....
 - (d).....
 - (e) subject to paragraph (3), the particulars or evidence required by the authority under section 62(3) of the 1990 Act (applications for planning permission)³
 - (f) the fee required to be paid in respect of the application

the authority must, as soon as is reasonably practicable, send to the applicant an acknowledgement of the application in the terms (or substantially in the terms) set out in Schedule 1.
7. However, the DMPO goes on to state in Article 11(3) that Paragraph (2)(e) only applies if:
 - (a) before the application is made the local planning authority publish or republish, for the purposes of article 34(4) and (5), a list of requirements on their website
 - (b) the particulars or evidence that the authority require to be included in the application fall within that list

(c) the particulars or evidence the authority require to be included in the application are (i) reasonable having regard, in particular, to the nature and scale of the proposed development; and (ii) are about a matter which it is reasonable to think will be a material consideration in the determination of the application

(d) the list mentioned in sub-paragraph (a) was published (or republished) during the 2-year period immediately before the date on which the application is made.

8. These provisions were considered by the High Court in *R(oao Buckinghamshire Council) v SST* [2022] EWHC 1923 (Admin), in which Ouseley J said at paragraph 107 of the judgment:

The Town and Country (Development Management Procedure) (England) Order 2015/595 made specific provision for validation disputes. Although Article 12 enables the authority to require particulars or evidence to be included in an application, it is only where the authority has published a list of its requirements on its website, that those particulars can be required for the application to be valid. Where the applicant considers that the requirements do not meet the tests in Article 34(6)(c), as not being reasonable having regard in particular to the nature and scale of the proposed development, or not being reasonably thought to be a material consideration in the determination of the application, it can raise the issue with the local authority, which either abandons the point, leading to the application being validated, or to its being maintained which leads to a non-validation notice. A short period is given for this process. If the application is validated, the various time scales for determination begin to run. If no decision has been made within those timescales, the application is referred to the Secretary of State. If the application is not validated, it also has to be referred to the Secretary of State within specified time frames. The content of a valid application is defined and specified.

9. The Council explains that the CIL form provides additional standard information to allow the Council to determine whether CIL is due and, if it is due, to then determine the amount due. The Council requires a CIL form for all applications, including LDC applications, irrespective of CIL liability. The Council confirms that the requirement to submit the CIL form has been on the Maidstone Local Validation List (the 'Local List' for the purposes of Article 11(e) of the DMPO since CIL was implemented in the borough in October 2018.
10. I recognise that CIL is only due on 'chargeable' development as defined in the Planning Act 2008 and The Community Infrastructure Levy Regulations 2010 (The Regulations). Chargeable development typically comprises buildings into which people usually go. It follows that if something is not a building, then it is not chargeable development. For planning purposes, a 'building' is defined in section 336 of the 1990 Act as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.
11. The LDC application was, in terms, for the siting (or stationing) of a caravan. It is settled case law that if something falls within the statutory definition of a 'caravan' as set out in the Caravan Sites and Control of Development Act 1960, then it cannot also be a 'building'. It follows that the stationing of the caravan

proposed in the LDC application is not 'chargeable development' for the purposes of the Regulations.

12. But that misses the point. The Council requires the submission of CIL Form 1 to first enable it to determine whether or not a proposal does constitute chargeable development and therefore whether or not it is liable for CIL. It therefore seems to me that, in purely procedural terms, there would normally be a requirement for a CIL Form 1 to have been submitted in relation to this LDC application even if, as in this case, no chargeable development is proposed. There is, however, an important caveat in this case to which I now turn.
13. In relation to the current appeal, the LDC application was submitted on 30 October 2023. The 'Local List' for the purposes of Article 11(e) of the DMPO was published 8 June 2021. The 'Local List' was therefore published (or republished) more than 2 years before the date on which the LDC application is made. Consequently, as set out in Article 11(3) of the DMPO, the requirements set out in Paragraph (2)(e) of Article 11(1) do not apply.
14. The Council explains that minor changes to the 'Local List' have been made since June 2021 without the need to consult. It is the Council's view that these minor changes have had no impact on the national or local validation requirements since they were published.
15. However, the requirement at Article 11(3)(d) is that the list mentioned in subparagraph (a) was *published* (or *republished*) during the 2-year period immediately before the date on which the application is made (emphasis added). On my reading of Article 11(3)(d), simply making changes considered to be only minor in scope is not of itself sufficient to obviate that requirement. Those changes need to be published or republished. I have no clear evidence before me to show that these minor changes were published or republished, the Council's evidence in that respect being somewhat ambiguous.
16. I conclude, on the balance of probability, that at the time the LDC application was made, there was no requirement for the application to include a CIL 1 Form. The application was therefore valid as made.

Whether use of the caravan was ancillary to the agricultural use of the land

17. The Council considers that an assessment of the appeal proposal requires three things to be established:
 - whether the stationing of a caravan in association with the agriculture enterprise would constitute development as defined by Section 55 of the 1990 Act
 - whether or not the land is being used for agriculture, and
 - whether operations equate to agricultural activity for which onsite presence is required.
18. I concur with the Council that the first two bullet points are essential for the purposes of this appeal. However, I see no reason why it would be necessary in this case to consider whether the operations involved equate to agricultural activity for which permanent on-site presence is required. That is a material

consideration that would only arise in situations whereby planning permission was required and there was a policy or other objection to the provision of permanent on-site accommodation. It is not relevant to the question as to whether the proposed use constitutes development in the first place. For present purposes, it is therefore sufficient to consider only the first two bullet points above.

Whether the stationing of a caravan in association with the agriculture enterprise would constitute development as defined by Section 55 of the 1990 Act

19. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.

20. The stationing of a caravan for purposes ancillary to an agricultural use of land would not constitute a material change in the use of the land. This was also the conclusion reached by the Inspector in allowing the appeal relating to the site at South Fork, Wrotham Hill, Dunsfold, Godalming, Surrey (APP/R3650/X/21/3285600).

21. It is, however, then necessary to go on to consider whether the whether or not the land is actually being used for agriculture.

Whether or not the land is being used for agriculture

22. Agriculture is defined at Section 336 of the 1990 Act as including horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur or for the purpose of its use in the farming of the land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes.

23. The Council explains that the land to which the LDC relates is currently in mixed use for agriculture and as a gypsy/traveller site, pursuant to planning permissions allowed on appeal in May 2019 (APP/U2235/C/18/3196793 and APP/U2235/W/18/3200492). The planning permissions were both temporary and for a limited period of four years. The permissions were also personal to Mrs Julie Hickmott & Mr Jimmy Hickmott.

24. These permissions were both subject to conditions, including that when the premises cease to be occupied those named, or at the end of four years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place. There were also conditions on both permissions requiring that no more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than two shall be static caravans or mobile homes) shall be stationed on the site at any time.

25. I note that the four-year temporary permissions granted in those appeals elapsed in May 2023, some five months or so prior to the date on which the LDC application was made. The appellant argues that now this permission has lapsed the only lawful use of the land is for agriculture.
26. However, on the appellant's own evidence, that was not the use of the land taking place on the date the application was submitted. The use taking place at that time was a mixed use for agriculture and as a gypsy/traveller site, albeit in breach of conditions imposed upon the planning permissions.
27. That being the case, at the time the LDC application was submitted the use of the site other than in accordance with those conditions (temporary permission and personal to the applicants) had been ongoing for a period of only some six months. The Council would therefore have been in a position to take enforcement action against the use of the land as mixed use for agriculture and as a gypsy/traveller site. It follows that the lawful use of the land for agriculture (in isolation) could not take place, and was not taking place, on the date the application for the LDC was submitted. The lawful use of the site for agriculture claimed by the appellant therefore did not subsist on that date.
28. Whilst the stationing of a caravan for purposes ancillary to an agricultural use of land would not constitute a material change in the use of the land, the same does not apply when the land is in a mixed use. In that scenario, the stationing of a caravan in association with the agricultural component of that mixed use would change the balance of that mixed use and would, as a matter of fact and degree, result in a definable change in the character of the use. It would therefore constitute a material change of use requiring planning permission.
29. On that basis, in this case the stationing of the caravan would, on the balance of probability, constitute development for the purposes of section 55(1) of the 1990 Act. Section 57 of the 1990 Act states that planning permission is required for development. There is no planning permission in place, deemed or otherwise, for that development.

Conclusion

30. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development was 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.

Paul Freer
INSPECTOR