



Appeal Decision

Site visit made on 12 November 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 19 DECEMBER 2024

Appeal Ref: APP/B1605/X/23/3331569

The Forge, Branch Road, The Reddings, CHELTENHAM, GL51 6RH

- 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 The Forge Residential Park Ltd against the decision of Cheltenham Borough Council.
 - The application ref 23/01678/CLEUD, dated 29 September 2023, was refused by notice dated 16 October 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 Use of land as a caravan site without restriction as to layout or numbers of caravans.
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Decision

1. 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.

Applications for costs

2. An application for costs has been made by the appellant against the Council. This is the subject of a separate decision.

Preliminary Matters

3. The Council has queried whether the application should have been submitted under s192 of the Town and Country Planning Act 1990 ('1990 Act') on the basis that the development described is a proposed use rather than a current use. In my view, had the development description specified a number of caravans in excess of those presently on site, that plainly would be a proposed use. However, the description 'use of land as a caravan site without restriction as to layout or numbers of caravans' is plainly capable in principle of describing an existing use in the circumstances, regardless of whether the appellant's intentions for the site may have played a role in the formulation of the description.
4. The appellant did not include copies of case law judgments relied upon with their representations. Copies were therefore obtained and sent to the Council for comment.

Main Issue

5. The main issue is whether or not the Council's refusal was well-founded. This will turn upon whether the development as described above was lawful as at the date of the lawful development certificate ('LDC') application.

6. In a LDC application, planning merits are not relevant. My decision rests solely upon the application of the law and relevant judicial authorities. The onus is on the appellant to make their case on the balance of probability.

Reasons

7. The Council granted a LDC¹ in respect of the appeal site for development described as *'Use of land as a caravan site including ancillary areas for amenity and car parking functions'*. The reasons given for the grant of the LDC are that *'The application is accompanied by information/evidence which is sufficient to establish that, on the balance of probability, the site has been used as a caravan site including ancillary areas for storage, maintenance, amenity and car parking functions since March 16 2013'*.
8. As the appellant outlines, the use which was certified as lawful by the 2023 LDC did not: contain limits as to the number or type of caravans; control the layout of the site; or require that ancillary areas are retained. It is clear and unambiguous on its face and so per the *Breckland*² judgment, extrinsic evidence is irrelevant to its interpretation.
9. The 2023 LDC sets the baseline for the permitted use and does not contain a limit on the number of caravans that can be sited – the existing number of caravans could be higher or lower and the use would still fall within the 2023 LDC. However, whilst use of land as a 'caravan site' as described in the appeal application would form a part of a use described as *'use of land as a caravan site including ancillary areas for amenity and car parking functions'*, that is not the same as saying that these two uses are the same; that a 'caravan site' use could properly be said to describe a 'caravan site including [my emphasis] ancillary areas for amenity and car parking functions' use. These descriptions are not, in my view, interchangeable since the baseline use described in the 2023 LDC specifically included ancillary areas as a descriptive component of the then lawful use.
10. Since the application relies upon the use certified as being lawful, and that is the baseline against which the materiality of any use must be assessed, I consider it appropriate to amend the description of what is applied for to *"use of land as a caravan site including ancillary areas for amenity and car parking functions, without restriction as to layout or numbers of caravans."*
11. The appellant makes reference to a 2016 planning permission³ for change of use of an area of land within the caravan site for the siting of two residential park homes. The appellant submits that the 2016 Permission was unnecessary pursuant to the *Newbury*⁴ principle on the basis that the 2023 LDC indicates that the land was being used as a caravan site and that 'considering the issues of intensification and a material change of use the 2016 permission would not have been necessary'. The appellant similarly submits that even if the 2016 Permission were necessary, it does not contain any conditions that would prevent the grant of the LDC sought in this appeal.
12. However, it is not necessary to explore whether or not the 2016 Permission was necessary or contained conditions that would preclude the grant of the

¹ Ref: 23/00443/CLEUD ('2023 LDC')

² *Breckland DC v SSHLG & Plum Tree Country Park* [2020] EWHC 292 (Admin)

³ Ref: 16/01661/FUL ('2016 Permission')

⁴ *Newbury District Council v Secretary of State for the Environment* [1981] AC 578

LDC sought in this appeal. Section 191(6) is clear that the lawfulness of the use stated in a certificate shall be 'conclusively presumed' and the reason for the grant of the 2023 LDC confirms that this was granted on the basis of immunity from enforcement action, rather than by reference to the 2016 Permission. The Council does not dispute this fact, the 2023 LDC itself is precise and unambiguous in this regard and there is no substantive evidence before me such as to displace the s191(6) presumption.

13. The Council's reasons for refusal include a statement that '*The application fails to specify the future number of caravans and consequently on the balance of probability it cannot be determined if a change of use is occurring*'. However, in this case, it is only the existing use that I am concerned with, along with the question of whether there are restrictions on caravan numbers and layout (which I have taken to mean the arrangement of the various components of the use)
14. Whilst the Council has not submitted a statement in respect of this appeal, in its representations on the appellant's costs application, the Council submits that the purpose of a LDC application is not to seek legal advice on the meaning of a previous LDC issued. However, in my view, the LDC application that is the subject of this appeal plainly does not represent a request for legal advice but rather a decision on whether the 2023 LDC restricts layout and caravan numbers. I find that it does not.
15. Accordingly, it is appropriate that I use my powers under s191(4) in this instance to grant a certificate on the basis of the use of the land as a caravan site including ancillary areas for amenity and car parking functions but without restriction as to layout or numbers of caravans. This use falls within the ambit of the 2023 LDC and so is lawful.

Other Matters

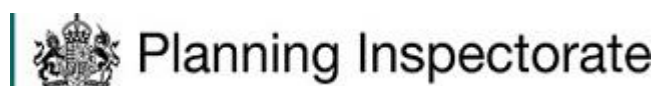
16. As outlined above, planning merits (such as highway safety or parking concerns) are not relevant to the determination of a LDC application. Legal issues related to the ownership of Branch Road also are not relevant to my determination of the lawfulness of the existing use.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of Use of land as a caravan site without restriction as to layout or numbers of caravans 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).

V Bond

INSPECTOR



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 29 September 2023 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:

The use described in the First Schedule falls within the lawful use certified by the 2023 Lawful Development Certificate ref 23/00443/CLEUD and so was lawful at the date of the application.

Signed

V Bond

Inspector

Date: 19 DECEMBER 2024

Reference: APP/B1605/X/23/3331569

First Schedule

Use of land as a caravan site including ancillary areas for amenity and car parking functions without restriction as to layout or numbers of caravans.

Second Schedule

Land at The Forge, Branch Road, The Reddings, CHELTENHAM, GL51 6RH

IMPORTANT NOTES – SEE OVER

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 19 DECEMBER 2024

by V Bond

Land at: The Forge, Branch Road, The Reddings, CHELTENHAM, GL51 6RH

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Scale: Not to Scale

