



Appeal Decision

Site visit made on 18 February 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2025

Appeal Ref: APP/E2205/X/23/3315338

Woodlands Park, Tenterden Road, Biddenden, Kent TN27 8BT

- 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 refusal to grant a certificate of lawful use or development ('LDC').
 - The appeal is made by Mr James Crackmore, Leisure Parks Luxury Living Ltd against the decision of Ashford Borough Council.
 - The application Ref 21/02010/AS, dated 17 November 2021, was refused by notice dated 21 September 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as *'use of 'Area E' at Woodlands Park, Tenterden Road, Biddenden for an overflow for caravans and tents from the adjacent caravan site and for recreation and storage use ancillary to the caravan site.'*
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Decision

1. The appeal is dismissed.

Background

2. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence would need to show that the claimed use of a particular piece of land has been used on an uninterrupted basis for a specified period of time.
3. The onus of proof is on the appellant to demonstrate, in this instance, and on the balance of probability, that the land has been used on a continuous basis for an overflow of caravans and tents from the adjacent caravan site for associated recreation and storage purposes for at least ten years prior to the date of the application made. Here, the relevant or material date, is therefore, 17 November 2011. Accordingly, the key is that the evidence should be precise and unambiguous to this end.
4. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on the evidential facts, planning legislation and relevant case law.
5. Here, the application site, ringed red (hereinafter referred to as area 'E') is a piece of land forming the south east section of a larger area of land comprising areas 'A', 'B', 'C' and 'D', as depicted on drawing no 1487-0002-05 (labelled the 'Planning History Plan') which was submitted alongside the LDC application made. The land, in its entirety, is under common ownership. The site location

plan, also submitted alongside the application (drawing no 1487-0006-01), shows the extent of the caravan storage within the remainder of Woodlands Park, as a whole.

Main Issue

6. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

7. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired.
8. The application form, completed by Richard Boother of RPS Group plc – who is also the current agent - in its section 7, asks the question 'When was the use or activity begun?' The answer to this is stated as being 1 January 2000. This would suggest that the agent was claiming immunity for Area E as an overflow site for caravans and tents by way of its use for such purposes over the previous 21 years. This specific assertion is not, though, supported elsewhere in the appeal papers, and is a somewhat confusing claim in the context of the case as a whole.
9. A series of aerial photographs are provided of which the most relevant are those flown on various dates between 7 March 2011 and 23 April 2020. During this period a total of nine aerial surveys were flown, and these photographic images are provided by the appellant. I note the appellant's commentary as to what the photographs showed as part of the letter which accompanied the s191 application, and my interpretation of what the photographs show is not, on the whole, necessarily different.
10. In summarising the findings which I have discerned from the images, Area E, in March 2011, had no touring caravans or tents present. In fact, it would appear that there was no activity whatsoever occurring on the site at that time. On 27 May 2012, the same is true apart from some evidence of narrow tracks across the site, and this is replicated in the survey flown on 9 July 2013. Moreover, the subsequent survey on 2 March 2015 shows nothing of any significance save for the impression that the said tracks have largely been grassed over. It is only in the survey flown on 28 September 2017 where, what appears as a small compound in the north-west corner of Area E, first becomes apparent. This is much more prominent in the image dated 2 July 2017 where a few vehicles and certain items - likely storage containers - are seemingly stationed on hardstanding laid. This is repeated on 5 February 2018 and 22 August 2019.
11. From the latest aerial photograph provided (as flown on 23 April 2020) it is clear that Area E still comprises an almost completely open greenfield piece of land, with some limited tree cover. There is a small, narrow inlet, of land, adjacent to the A262, which is excluded from Area E, and the only apparent encroachment is, as described, in its north west corner. Access to this compound is gained from the narrow access road system that runs within the

confines of the site, primarily serving the mobile homes situated within Areas A, B, C and D.

12. It would appear from the planning history that Area C, immediately to the west, and the largest of the five land areas identified, contains the bulk of the established caravan park. In this connection I note the limitations of the site plan relating to application ref 09/00968/AS. Areas A, B and D were clearly brought into use subsequently, and were effectively subsumed into the holiday park.
13. None of the previous planning applications, as referred to and summarised by the appellant specifically refer to the area of land comprising the current appeal site. Also, the appeal decision letter (*APP/E2205/X/09/2118771*) following the Council's decision not to issue a LDC for the use of the land as a holiday caravan and camping park, is silent regarding Area E, although the appellant's paperwork accompanying the case, and now summarised by the appellant for the current appeal, does relate only to Areas A, B and D.
14. Admittedly, the above appeal decision was issued over eighteen months before the said material date but the same is also true of the 2019 appeal decision letter (*APP/E2205/W/18/3216264*) where, although this proposal related to :Area D, the Inspector, in describing the site, similarly makes no mention of Area E.
15. Taking into account the above, combined with the aerial photographic evidence, the picture gained conflicts with the appellant's claims.
16. To complete the picture the planning unit is of relevance here. In the judgement of *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207 it was held that the starting point in defining the planning unit is that it is usually the unit of occupation. However, the answer is often not so clear cut and it necessitates specific consideration on a case by case basis. Here, from what I have seen regarding the extensive planning history for Woodlands Park, Area E has been separated from the caravan park as a piece of land ringed blue, denoting it is an adjacent area of land outside the particular application site but under the applicant's ownership and control. I specifically refer here to the location and site plans submitted for the applications refs 12/00898, 15/01348/AS and 18/00378/AS.
17. I accept that Area C was similarly excluded from these applications, and also ringed blue, but all the aerial photographic evidence and associated history clearly illustrates that the planning position for 'C' is markedly different to 'E'. There is no evidence before me to realistically suggest that the planning unit can be considered to include Area E.
18. Despite the above I have also had regard to the two Statutory Declarations (SDs) produced alongside the appeal. One is from a resident who has been a resident at Woodlands Park since 2014 and, who in 2014, became an administration clerk in the park's office and then, later, Site Manager. She states:

"The field in question has been in use all the while I have been resident and employed by the Park as a recreation area for resident (presumably residents)

and campers. I would describe the site as a public park for use by residents and campers. The field is used as a dog-walking area and has been used by the staff and residents for outdoor events...and for grandparents to play with their grandchildren."

19. Another SD is from someone who says he has known the site at Woodlands Park for 15 years. He indicates that he works there as a site warden and also manages bookings. He has, apparently, resided at the Park between February and October each year in a touring caravan, and states:

"In the 15 years I have known the site, the area has also been regularly been used as an overflow area for caravans and tents, and as a recreation area for guests...on an average weekend there can be anywhere between 30 and 100 guests in the field staying in caravans or tents."

20. I accept that the appeal site may be used for recreational purposes by persons occupying the caravans in Areas A, B, C and D, but that is most likely because it is an adjacent field for which entry is not barred to occupiers of Woodland Park. That does not mean that Area E actually forms part of the Park's planning unit. Neither is the apparent establishment of a very small compound in Area E's north-west corner, likely for the purposes of storage, of sufficient significance to allow for the planning unit to be extended with Area E subsumed.
21. The appellant refers to the Council's evidence and its officers' site visit findings being only a snapshot in time. The aerial photographs could also be considered as such, but I note that of the nine surveys flown between 7 March 2011 to 23 April 2020, for which photographs have been supplied, three were during the summer months with two in April and May, respectively. Also, two of these were taken on a Sunday and two on a Thursday, which would take in long weekends spent at the Park. This would also suggest that any use of Area E is not intrinsic to that of the Park itself, and this has been a constant over the relevant period.
22. I acknowledge the 'Gabbittas' principle whereby it was held that if a local planning authority has no evidence itself to contradict the applicant's version of events then there is no good reason to refuse the application. In contrast, here the volume of available evidence in its entirety firmly outweighs and tends to disprove the appellant's case, which I find somewhat thin.
23. To reinforce my findings, the evidence adduced has to be precise and unambiguous to support the claim yet, for the reasons I have highlighted, this is not the case here. Accordingly, I find the evidence put forward by the appellant to confirm the claimed use rights since at least 17 November 2011, in an attempt to demonstrate effective immunity from planning control, is not convincing. The period up to 17 November 2021 is not properly accounted for, with the appellant's submitted evidence being neither precise nor ambiguous.
24. Having, therefore, interpreted and weighed up all the evidence available I must conclude that the appellant has not discharged the burden of proof.

25. Accordingly, for the reasons given above I conclude, on the evidence available, that the use was not lawful on 17 November 2021, within the meaning of section 191(2) of the Town and Country Planning Act 1990.

26. I will, therefore, exercise my powers under section 195(3) of the Act.

Timothy C King

INSPECTOR