
Appeal Decision

Site visit made on 21 November 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 December 2016

Appeal Ref: APP/L1765/X/16/3152414

Wickham Court, North Boarhunt, Wickham PO17 6JS

- 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 Royale Parks Ltd against the decision of Winchester City Council.
- The application Ref 15/02861/LDP, dated 16 December 2015, was refused by notice dated 8 June 2016.
- 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 use of the land for the stationing of holiday caravans for twelve months of the year together with a maximum of 30 caravans for residential occupation.

Summary of 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.

Background and procedural matters

1. The appeal site, comprising 4.2 hectares, was formerly known as South Hants Country Park, and has the benefit of a number of Lawful Development Certificates (LDC's) for use of the land for the stationing of caravans on various parts of the site. More recently and following an Inquiry¹, (the 2014 appeal) the Inspector opined firstly that the lawful use of the whole site was as a holiday caravan site with no restriction on year round use. Secondly he found that residential use would be materially different from a holiday use. The 2014 appeal is a material factor in this appeal to which I must give significant weight, unless it is demonstrated that there has been a material change of circumstances at the site².
2. By reason of the first finding the Council granted an LDC³ (the 2014 LDC) for the use of the whole site for the stationing of holiday caravans for 12 months of the year. The LDC also said that a maximum of 18 caravans used for residential purposes would be lawful and consequently these could be stationed anywhere on the site.
3. The site has recently changed ownership and is operated by the appellant who appears to specialise in the provision of park-homes for older residents and/or holiday makers. The appellants proposed layout is for about 123 units

¹ Appeal decision dated 4 March 2014, reference APP/L1765/X/13/2202029

² *Thrasyvoulou v Secretary of State of the Environment* [1990] 2 A.C 273

³ Council reference 14/01312/LDC issued 17 September 2014

although the exact number and the layout of the site is subject to change and is not bound by any restriction.

4. On 5 October 2016, thus after the application subject of this appeal was made, the Council issued a further LDC⁴ which certified that a maximum of 21 caravans could be used for residential occupation. However, for the purpose of my decision Section 192(2) of the Act⁵ says that I must consider the circumstances as on 16 December 2015, the date of the application.
5. Section 55(1) of the Act says that the material change of use of any building or other land is development. Thus in this appeal it is necessary to assess whether or not the proposed use constitutes a material change of use. The onus of proof lies firmly with the appellant and the test is the balance of probability.

Reasons

6. The main issue in this appeal is whether there is a material difference between a use of land for holiday caravans and not more than 18 residential caravans and the use of land for holiday caravans and not more than 30 residential units.
7. The Council says in its submission that there are a variety of types and tenures on the site and it is clear which caravans are being used for holiday purposes. This is because holiday units are less likely to have a curtilage, to need external storage, and to have fencing or other domestic paraphernalia. Moreover it says that it is unlikely that holiday caravans will be occupied all year round whereas a residential use would have a steady level of activity throughout the year. Consequently there would be variation in the character and appearance of the site. It is also suggested that an increase of 66% in the number of residential caravans on site is a material increase. They add that demands on the limited facilities and infrastructure in the village of North Boarhunt in particular and the locality in general would be increased if there were more permanent residents.
8. The Council's approach is lent support by the findings of the Inspector in the 2014 appeal, who noted that the character of the site varied. Part was occupied by the smaller caravans, the statics, which generally had a simple decked entrance platform with room for a table and chairs and were sited in the mown grass of the holiday park. The other part was dominated by larger park-homes which tended to have a garden around them and evidence of domestic paraphernalia. In terms of the latter the Inspector opined that he did not know the tenure of the park-homes "but they looked like they were permanently occupied, even if they weren't".
9. The 2014 LDC marked a step change in the arrangement of the site. From that date, residential units could be located anywhere on the site, whereas previously they had been grouped in a separate enclave in the centre of Wickham Court. Moreover caravans, whether, statics, park-homes or any other caravan, could from then on be sited the whole year round on what was historically amenity space and/or space for touring caravans.

⁴ Council reference 16/01340/LDP issued 5 October 2016

⁵ The Town and Country Planning Act 1990 as amended

10. The appellant says, relying on *Hertfordshire*⁶ that “in judging whether an increase in activity has led to an intensification of such a nature or degree...the change in effect...must exceed that which could be caused by the permitted use.” In this case, the appellant says that when the site is considered as a whole the difference is between 1 in 4 units as opposed to 1 in 7 being in residential use. In these circumstances, the total percentage of holiday units would still be about 75% whereas it is currently about 85%.
11. The indicative layout submitted to support the LDC application shows that the proposed layout would be more spacious than that at the time of the 2014 appeal because each unit would have greater separation from neighbouring units. The plan also shows that the whole of the Wickham Court site, other than the club house, would be utilised for the stationing of caravans. This includes all the land previously used for accommodating seasonal touring caravans and the removal of facilities such as the tennis courts and swimming pool.
12. I have a description of the site as on 26 February 2014⁷, thus about 22 months before the application for the LDC. This description was not challenged. I saw the site about 11-12 months after the application was made. In the intervening period the appellant has undertaken work to re-organise the site but I have no information about when this commenced or how far it was advanced by the date of the application. The statement that was submitted to support the LDC does not help and thus the only evidence I have before me is the Council’s LDC decision dated 8 June 2016. This says that there is still a variety of types and tenures of caravan on site and it is clear which are being used for holiday purposes. Moreover the aerial photograph submitted by the Council dated 2016 (thus sometime after the date of the application) appears to show limited changes to the site. These alterations appear to be primarily the re-organisation of that part of the site close to, or previously used for permanent residential accommodation⁸ in the centre of the site.
13. Thus, at the date of the application for the LDC before me, on the balance of probability, it seems that the replacement of static vans was not advanced and the character and appearance of the site remained similar to that described in February 2014. However, irrespective of this, the lawful use, by reason of the 2014 LDC, permitted the stationing of any type of caravan on the land. Thus whether or not, at the time of the application, the site was primarily laid out with statics or in the alternative park-homes is not determinative. Hence the remaining factor before me is whether or not the higher percentage of residential units is material.
14. The appellant says that all the units will be ‘owner occupied’ and because they are individually owned, whether for holiday or residential use, there is an increased likelihood that each unit would tend to have a separate curtilage and at least some domestic paraphernalia. Thus in terms of possible visual differences between residential and holiday occupation this is likely to be limited.
15. However, even if the appearance of the units would be similar, it is necessary to consider the character of the use. The appellant says that the different

⁶ *Hertfordshire County Council v SCLG and Metal and Waste Recycling Limited* [2012] EWHC 277 (Admin)

⁷ From the 2014 Appeal decision.

⁸ The ‘red land’ referred to in the 2014 appeal.

movement patterns of an extra 12 residential units would not be noticeable in the context of the whole site of about 123 units.

16. I accept it is difficult to prove a negative and in this case the context has altered because the occupiers, residents and visitors, are agreed to be now solely older persons. The management of the park is a matter outside the remit of this appeal and is not controlled by any planning conditions. In these circumstances, the character of the park is changing because it is no longer a 'family site' accommodating a holiday fleet operated by a national company. This change, which is outside planning control, is likely to result in more change to the character of occupation than a limited increase in residential units. This arises from a changed pattern of use because 'over 50's' are not normally tied by having to limit their visits to the school holidays. Hence although it is probable that the site would continue to be more animated in the summer months, the use of the holiday accommodation would tend to extend over a longer period than was previously the case. This all year round holiday use would therefore be likely to offset the impact of more residential units on the site.
17. In terms of the off-site impacts, the issue before me is whether the increase from 18 to 30 permanent residential units is likely to have a material effect on the local infrastructure. The appellant seems to have overlooked that the onus of proof lies firmly with him and he has failed to address the issues of off-site impacts. In general his evidence is very thin, and contrasts poorly with the appeal decisions he relies on, which appear to have been supported by resident and traffic surveys.
18. However, despite this paucity of supporting information, occupation of all the units is now permitted all year round and the character and impact of the park is changing out-with planning control. Hence I conclude that in the light of *Hertfordshire*, the impacts of a different management model, and for the reasons I have given above, the increase from 18 to 30 residential units would not materially exceed that which could arise from the present lawful use. Thus at the date of the application for the certificate the proposal did not amount to a material change of use and consequently it is not development as prescribed by Section 55(1) of the Act.
19. I have had regard to the appeal decisions relied upon by the parties and in particular the 2014 appeal on this site. But there has been a significant change in circumstances since that Inquiry by reason of the 2014 LDC. This allowed residential caravans anywhere on the site (subject to a limit on numbers) and also permitted the year round use of holiday caravans on all parts of the site. In turn this heralded the commencement of the process to radically rearrange the site and replace existing statics with larger park-homes. Thus the increase in the number of residential units must be assessed in the light of the changed circumstances.
20. Consequently I conclude, on the evidence now available, that the Council's refusal to grant an LDC for the use of the land for the stationing of holiday caravans for twelve months of the year together with a maximum of 30 caravans for residential occupation was not well founded. Accordingly, because there is no material change of use, the appeal will succeed and I will exercise the powers transferred to me under section 195(2) of the 1990 act as amended and grant a certificate in the terms sought.

Decision

21. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Sukie Tamplin

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 16 December 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use for the stationing of holiday caravans for twelve months of the year together with a maximum of 30 caravans for residential occupation does not amount to the making of a material change in the use of land that would require planning permission

Signed

Sukie Tamplin

Inspector

Date **12 December 2016**

Reference: APP/L1765/X/16/3152414

First Schedule

The use of the land for the stationing of holiday caravans for twelve months of the year together with a maximum of 30 caravans for residential occupation

Second Schedule

Land at Wickham Court, North Boarhunt, Wickham PO17 6JS

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: **12 December 2016**

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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Scale: NTS

