



Appeal Decision

Site visit made on 3 January 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 5 January 2017

Appeal Ref: APP/Q3305/X/16/3155196

Old Down Caravan Site, Emborough, Wells, Somerset BA3 4SA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter "the Act"] 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 JBS Park Homes against the decision of Mendip District Council.
- The application [Ref 2015/2872/CLP], dated 3 December 2015, was refused by notice dated 27 June 2016.
- The application was made under section 192(1)(a) of the Act.
- The development for which an LDC was sought was: "Use of land for the purposes of siting of caravans for the purposes of human habitation, excluding the months of May, July 2nd to August 1st and September 2nd to October 2nd".

Decision

1. The appeal is allowed and attached to this decision is an LDC that describes the development which is considered to be lawful. A plan that identifies the land, edged in red, is attached to the LDC.

Procedural matters

2. The description of development has been taken from the *Planning Supporting Statement* that accompanied the application for an LDC.
3. The *Planning Supporting Statement* says that the caravan site was permitted for residential rather than holiday use and that this application is made without prejudice to a later argument that such rights still exist. I am not provided with a copy of planning permission 030534/001 and so I express no view on this claim. However I intend to proceed on the basis that the use of the site is governed by one or both of the planning permissions that I outline below¹.
4. The Appellant has relied, amongst other things, on the High Court transcript of *Winchester City Council v SSCLG and others* [2013] EWHC 101 (Admin) but it is material that this has subsequently been considered in the Court of Appeal². It pre-dates the date of the application and whilst the judgement at first instance was upheld I have also noted the findings of the Court of Appeal.
5. An application for an award of costs has been made by JBS Park Homes against Mendip District Council. This application is the subject of a separate decision.

Background

6. Planning permission was granted for: "*Use of land for holiday static caravans and touring vans as confirmed by letter of 22nd April 1988*", under the Council's reference 030534/003 on 16th May 1988. Nine conditions were imposed of which 2 are significant: (2) "*No more than ten touring caravans and twenty static caravans shall be stationed on the site at any one time*"; and (5) "*Between the 1st April and 31st October in any one year, none of the*

¹ The site licence also refers to planning permission 030534/008, which permits storage on one area of the site.

² See: <http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2015/563.html>

caravans hereby permitted shall be in the same occupation for a continuous period exceeding 31 days, with no return within the following 31 days by the previous occupier". The reason for the latter was that permanent residential occupation of the site would be contrary to a Development Plan policy.

7. Planning permission was subsequently granted for: *"Alteration of condition No 5 on planning consent 030534/003 to allow extended season 1st March to 30th November inclusive"*, under the Council's reference 030534/009 on 22 February 1999. There were 3 conditions imposed of which 2 are significant: (2) *"The area shown hatched on the attached plan shall not be used for any purposes other than the siting of static caravans and touring vans and for the purposes of camping between the 1st March and 30th November of any year. None of the static caravans (approved under planning consent ref. no. 030534/003) within this period shall be in the same occupation for a continuous period exceeding 31 days, with no return within the following 31 days by the previous occupier"*; and (3) *"The remainder of the site outside the hatched area on the attached plan shall not be used for any purposes other than the siting of static caravans and touring vans and for the purposes of camping between the period 1st March and 31st October of any year. None of the static caravans (approved under planning consent ref. no. 030534/003) within this period shall be in the same occupation for a continuous period exceeding 31 days, with no return within the following 31 days by the previous occupier"*. Both of these conditions were imposed to secure the use of the site for tourism purposes only.

Main issues

8. There are 2 main issues. The first involves the interpretation of the planning permissions and the conditions imposed thereon to ascertain how they govern the use of the site and hence inform whether the proposed use excluding the specified dates would be lawful. The second is whether the proposed use would give rise to the making of a material change in the use of the land.

Reasons: (i) Interpretation of the planning permissions and the conditions

9. In the case of *Newbury DC v SSE* [1981] AC 578 it was held that the grant of planning permission was not necessary because the use, in that case for storage, was already established. The Appellant seeks to apply that ratio to the facts of this case and says planning permission 009 was not necessary because occupation between 1st November and 31st March is not restricted by planning permission 003. This dictates that my starting point is to interpret the planning permission and, in particular, condition 05 in order to try to give it a sensible meaning.
10. In terms of first principles planning permission 003 does not expressly permit residential use but no claim is even made that it should not be interpreted so as to permit such use. Amongst other things: i) condition 05, and its reason, expressly envisages occupation of the caravans that are referred to in the description; and, ii) I am provided with site licences that refer, amongst other things, to the Caravan Sites and Control of Development Act 1960 ["the 1960 Act"]. So I start from identifying common ground that planning permission 003 permitted the use of land for both the siting and residential use of caravans and touring vans. It is, in short, a caravan site as defined in the 1960 Act.
11. Again it appears to be common ground that the only condition on planning permission 003 that might purport to control the use of the caravans at certain times of the year is condition 05. However I agree with the Appellant that the condition is silent as to the use of the caravans between 1st November in one

year and 31st March in the next. The only restriction as to their occupancy is between 1st April and 31st October. Condition 5 does not include any phrase in respect of the use of the caravans outside of this period and nor is there any limitation in the description of development. For completeness I would add that whilst the description expressly refers to a letter dated 22nd April 1988, I have not been provided with a copy thereof. So whilst I have considered the possibility that the letter was incorporated into the planning permission the Council has not argued that it imposes any such limitation and without sight of it I am not in a position to make a positive finding to that effect.

12. It follows that on the information before me no more than 30 caravans can be occupied between 1st November in any one year and 31st March in the next. The Council could have expressly imposed a condition to preclude the use of the site during the winter months but did not do so. Residential use for 5 months over winter is therefore permitted by planning permission 003.
13. Against that finding it follows that planning permission 009 was unnecessary. Planning permission 003 was implemented and whilst all parties appear to have assumed that planning permission 009 was implemented this situation has a direct parallel with that prevailing in *Newbury*. I acknowledge that: i) the conditions of the site licences require compliance with the conditions imposed on various planning permissions; and, ii) evidence has been provided from a website³ to show that the site is open from 1st March to 30th November, in line with what was permitted by planning permission 009, and that it has done so since at least November 2002. However, against a finding that use during March and November is permitted by planning permission 003, this evidence is not determinative of the future use of the site as being sought by this application. In particular any conditions on the site licence are a matter between the parties and are not determinative of the planning position as it is open to the Appellant to make an application for a fresh site licence prior to commencement of any extension to the period during which the site opens⁴.
14. For these reasons I do not need to examine planning permission 009 or the conditions imposed thereon. In the brave new world envisaged by the LDC the Appellant can rely exclusively on planning permission 003 and apply for a new site licence. I therefore turn to focus on the use between April and October.
15. Condition 5 does not preclude either the whole site or each individual caravan thereon from being used continuously between 1st April and 31st October. The way that it seeks to prevent permanent residential occupation is to ensure a turnover of residents in each caravan. The Appellant therefore submits that residents could move between caravans on the site broadly in alternative months; I agree. In the alternative the description of development envisages that residents vacate their respective caravans during the year, as follows. The residents can stay in April, being a continuous period of 30 days, but have to vacate in May, being a continuous period of 31 days. Residents can then return in June but have to vacate before July 2nd, which would be the 32nd day. Residents can return after 1st August for up to 31 days, which requires them to vacate by 2nd September and then return again 31 days later on 2nd October. It might prove to be very labour intensive to enforce but there is no reason why it cannot be enforced and any difficulties are entirely of the Council's own making in drafting the condition in the way that it has. Above all this case

³ <http://www.ukcampsite.co.uk/sites/reviews.asp?page=9&revid=3145>

⁴ I note the licence dated 17 April 2008 appears to be for a limited period of 10-years from that date in any event.

- illustrates why it is so important to take time in drafting appropriate conditions.
16. In the grounds of appeal there is a suggestion that insofar as the condition refers to "*the caravans hereby permitted*" it could only be enforceable in relation to the caravans shown on the approved plans. The first point is that I have not been provided with a copy of the approved plans for planning permission 003. However the more substantive point is that what the Council permitted was a "*Use of land...*", rather than specific caravans as shown on a specific plan. As such a distinction can be drawn with the situation prevailing in Tewkesbury⁵. It is clear that the land is a caravan site and, subject to any site licence conditions, caravans can be moved around and, inevitably, replaced over time. Accordingly I reject any inference that the condition would not be enforceable in respect of new caravans brought onto the land in the future.
 17. On the first main issue I conclude that planning permission 009 was not necessary because planning permission 003 authorises the use of the land between November and March. The key condition that governs the use of the site outside of this period can be read in such a way as to permit the proposed use outside of the specified dates, which would therefore be lawful.

Would the proposed use give rise to the making of a material change in the use of the land?

18. As I have already noted planning permission 003 expressly permitted: "*...holiday static caravans and touring vans...*" [*my emphasis*], but it must be common ground that there is no condition to this effect. As Hickinbottom J held in *Cotswold Grange Country Park LLP v SSCLG and Tewkesbury BC* [2014] EWHC 1138 (Admin): "*If a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition*".
19. The description of development that is proposed by this LDC is not restricted to holiday occupancy. In considering whether the occupation of caravans on this site by residents who might not be on holiday might represent the making of a material change in the use of the land it is material that: i) the Council, having received argument as to why there would be no such material change, did not cite this as a reason for refusal; and, ii) unlike the situation prevailing in other examples to which I am referred⁶, this site is proposed to be occupied for a maximum of 9 months per annum rather than year round.
20. Plainly I have already considered the thrust of these arguments in my decisions at Cotswold Manor Country Park and Cotswold Grange Country Park⁷, which are relied upon by the Appellant. It should not come as a surprise to find that I adopt the same approach and, given the position of the Council, do so briefly.
21. In terms of on-site effects, given the terms of condition 2 of planning permission 003, I can be satisfied that there would be no increase in the number of caravans, which are not required to be removed out of season. Thus, although at the time of my inspection there were relatively few chalet style units and touring caravans on the site, a proper comparison between the use before and after the change should be conducted on that basis rather than on a temporal basis arising from a visit in what is currently the 'closed' season.
22. In any event my inspection confirmed that the most conspicuous public view of the site is that from the vicinity of the entrance to the site on the B3139. From

⁵ Cotswold Grange Country Park: see [2014] EWHC 1138 (Admin) and appeal Ref APP/G1630/X/13/2191279.

⁶ Appeal Refs APP/C/93/P1615/627553, APP/G1630/X/11/2156048 and APP/B1225/X/15/3002181.

⁷ Appeal Refs APP/G1630/X/11/2156048 and APP/G1630/X/13/2191279, respectively.

this public vantage-point the chalets that were on the site ran along the width of the site, albeit towards the rear of the site. Other existing structures, which presumably serve as washroom and toilet facilities, are prominent. Taken together with the signage at the entrance it is clear, even in winter, that the land is a caravan site. Other public views, notably from the A37, are limited by vegetation even in winter. Whilst there is a public footpath to the south-east this does not permit clear views of the caravan site.

23. In terms of character I have already given reasons why the caravans can be occupied during the whole of the year: i) there are no restrictions between November in one year and March the next; and, ii) between April and October there could be a turnover of residents such that all caravans were continuously occupied. There are no conditions or limitations preventing occupation in particular months of the year. The Appellant's unchallenged assertion is that noise levels from the park if used for residential rather than holiday use would be expected to be lower. In making a comparison between the character of the use before and after the change there would be no material difference.
24. Turning to off-site effects there is no evidence of traffic generation before me as the Council did not consult the Highway Authority. The Appellant says that the site would be subject to an age occupancy condition, presumably imposed via a licence agreement. In line with my reasoning in the Cotswold Manor Country Park appeal decision, if that assumption is ill-founded or subsequently changed then it might give rise to the need to re-assess materiality. An LDC is declaratory based on the information provided. However on that assumption I accept that there would be a lower level of traffic generation in comparison to a conventional dwelling. Amongst other things there would be no trips to school. Conversely residents on holiday might have a greater propensity to travel by car to see local attractions. As the review on the website [footnote 3] says the site is an excellent base for the surrounding area, including Bath and Cheddar. Accordingly when comparing the permitted use with that proposed, whilst there might be an increase in the overall number of vehicle movements, there is no evidence to support a finding that this change would be material.
25. On the second main issue I conclude that the proposed use would not give rise to the making of a material change in the use of the land.

Other matters

26. I have taken account of the submission by Binegar Parish Council but, as it effectively acknowledges, the contents of its representation is not relevant to the legal determination that I am charged with making. Riparian rights exist for water to flow onto land in its natural quantity and quality, but if there were to be a change at a future date that is a matter between the parties in the first instance. In a similar vein the claim that part of the hedge has been removed and not reinstated appears to be entirely a civil matter between the parties.

Conclusion

27. For the above reasons, having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC in the terms that were applied for, namely: *"Use of land for the purposes of siting of caravans for the purposes of human habitation, excluding the months of May, July 2nd to August 1st and September 2nd to October 2nd",* was not well founded. The appeal succeeds and I shall exercise the powers transferred to me in section 195(2) of the Act.

Pete Drew

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 3 December 2015 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, would have been lawful within the meaning of section 191 (2) of the Act, for the following reasons:

1. Since the proposed use is permitted by the terms of planning permission 030534, dated 16th May 1988, no enforcement action could be taken as the proposed use would not contravene condition 05; and,
2. The proposed use would not be a contravention of any of the requirements of any enforcement notice in force.

Signed

Pete Drew
Inspector

Date 5 January 2017
Reference: APP/Q3305/X/16/3155196

First Schedule

Use of land for the purposes of siting of caravans for the purposes of human habitation, excluding the months of May, July 2nd to August 1st and September 2nd to October 2nd.

Second Schedule

Old Down Caravan Site, Emborough, Wells, Somerset BA3 4SA



Plan

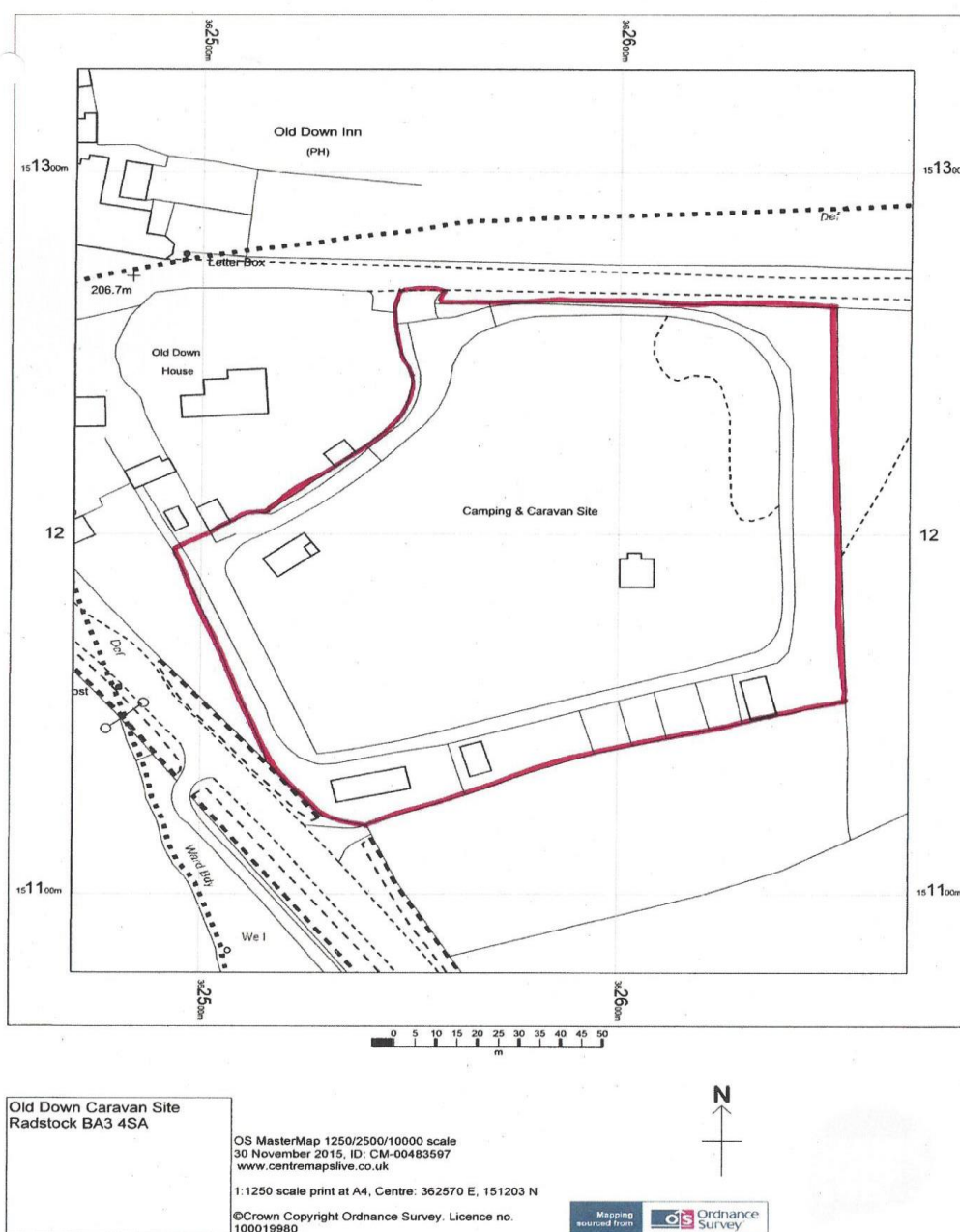
This is the plan referred to in the Lawful Development Certificate dated: 5 January 2017

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

Land at: Old Down Caravan Site, Emborough, Wells, Somerset BA3 4SA

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Scale: Do not scale as stated scale might have changed as the plan has been scanned.



NOTES

This certificate is issued solely for the purpose of Section 192 of the Act.

It certifies that the use 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, would not be liable to enforcement action, under section 172 of the 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 extends beyond the specific dates identified, 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 Act, which says that the lawfulness of a specified use is only conclusively presumed where there has been no material change, before the use is instituted, in any of the matters which were relevant to the decision about lawfulness.