
Appeal Decision

Site visit made on 21 December 2016

by Paul Dignan MSc PhD

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

Decision date: 23 January 2017

Appeal Ref: APP/R3325/X/16/3155212

Greenacres Park, Coppits Hill, Yeovil, BA21 3PP.

- 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 J and E Fury Park Homes against the decision of South Somerset District Council.
 - The application Ref. 16/00006/COL, dated 10 August 2015, was refused by notice dated 23 March 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 was "existing use as a caravan site".
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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 proposed use which is considered to be lawful.

Reasons

2. The appeal site is an L-shaped strip of land along the east and south of a field to the west of Coppits Hill Lane. In November 2015 the Council issued a Certificate of Lawful Use or Development (LDC)¹ certifying that "*The use as a caravan site for the siting of 15 caravans in contravention with condition 2 attached to planning permission 781544*" (sic) was lawful. Condition 2 described the area to which the permission applied, which is different to the land specified in the LDC, as set out in the reason for granting the LDC.
3. The appeal application appears to have sought certification of the entire field for use as a caravan site. However, the Council's decision to refuse the application was based on the proposed siting of an additional 2 caravans on the land specified in the November 2015 LDC above, and it is that decision that is the subject of this appeal. I have dealt with the appeal on that basis.
4. What is at issue is whether the use for which the certificate is sought was lawful at the time the application was made. Section 191(2) of the 1990 Act provides that a use of land is lawful if no enforcement action may be taken in respect of it, whether because it did not involve development or require planning permission or for any other reason. In this case the appellant submits that the siting of 2 additional caravans does not require planning permission

¹ Ref. 15/03688/COL

- because it is not development by reference to section 55(1) of the 1990 Act, on the basis that it does not amount to a material change in the use of the land.
5. The siting of 2 additional caravans, bringing the total to 17, would be an intensification of the present use. It is well established in law that intensification of an existing use may amount to a material change of use, but only if the intensification amounts to a 'material change in the definable characteristics of the use of the land'. The Council considers that any additional caravans on the site would amount to a material change of use because they would generate additional traffic and have implications for highway safety. Their decision notice also stated that the proposal would not be lawful as the LDC only allows the use of the land for the siting of 15 caravans, but this is not correct. The reference to the level of use merely provides a basis for determining whether or not changes in the level of use are material for planning purposes.
 6. It is reasonable to consider that an increase in caravans on the site is likely to generate more traffic. The access from the site onto Coppits Hill Lane has very sub-standard highway visibility in both directions, and the lane itself is single-track with few passing places. Furthermore, the junctions at either end of Coppits Hill Lane with the wider road network are sub-standard, and there have been 2 recorded personal injury vehicle accidents on Coppits Hill Lane and 1 at the A37 junction since 2009. The general traffic environment in the vicinity of the site is clearly poor, and additional traffic is likely to have a negative impact.
 7. However, in the context of intensification of an existing use, the question to be asked in this case is whether the off-site effects of that intensification are such that there would be a definable change in the character of the use of the land. There is potentially an increase of 14% in traffic generated at the site level, somewhat less at the access onto Coppits Hill Lane given that it also serves a terrace of houses, and even less on Coppits Hill Lane itself, which has 10 houses and through traffic. As a matter of fact and degree, I consider that the increase in traffic resulting from the additional caravans proposed, and the implications for highway safety and local amenity, would not cause such a fundamental change in the definable character of the use of the land as to amount to a materially different situation in planning terms. On balance therefore I consider that the proposed increase in the number of caravans on the site would not amount to a material change of use requiring planning permission.
 8. My conclusion therefore, having considered all other matters raised, including the appeal decisions and legal cases referred to, is that the Council's decision to refuse to issue an LDC was not well founded. The appeal succeeds accordingly and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Paul Dignan

INSPECTOR

Lawful Development Certificate

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

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 10 August 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 Town and Country Planning Act 1990 (as amended), for the following reason:

The siting of 2 additional caravans, bringing the total number of caravans on the site to 17, would not amount to a material change in the use of the land, and hence would not be development requiring planning permission.

Signed

Paul Dignan

Inspector

Date **23 January 2017**

Reference: APP/R3325/X/16/3155212

First Schedule

The siting of an additional 2 No. caravans.

Second Schedule

Greenacres Park, Coppits Hill, Yeovil, BA21 3PP

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 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 have been 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.

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: **23 January 2017**

by Paul Dignan MSc PhD

Land at: Greenacres Park, Coppits Hill, Yeovil, BA21 3PP.

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