



Appeal Decision

Hearing held and site visit made on 20 June 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 27 June 2017

Appeal Ref: APP/J3720/X/16/3156596

Part of the land at Riverside Caravan Park, Tiddington Road, Tiddington, Stratford-Upon-Avon, CV37 7AB

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawful Use or Development ("the LDC").
- The appeal is made by Avon Estates Limited ("the Appellants") against the decision of Stratford on Avon District Council ("the Council").
- The application Ref 16/01104/LDP, dated 1 April 2016, was refused by notice dated 13 July 2016.
- The application was made under Section 192(1)(a) of the 1990 Act.
- The use for which the LDC is sought is the use of the site as a caravan site (to include 40 caravans whether static or touring) for human habitation.

Summary of Decision: The appeal is allowed as set out in the Formal Decision below and the LDC is attached.

Procedural and Background Matters

1. I will refer to:
 - a) The two parcels of land to which the appeal relates as "the Appeal Site".
 - b) The northern most parcel of land as "the Northern Parcel".
 - c) The southern most parcel of land as "the Southern Parcel".
 - d) The totality of the land owned by the Appellants at the Riverside Caravan Park as "the Riverside Caravan Park".
2. I will not refer to "motorhomes" separately from touring caravans as it was accepted by the Council and the Appellants that the terms are interchangeable.
3. The Appellants agreed at the Hearing that the correct address for the Riverside Caravan Park is that given in the heading above.
4. In March 1961 conditional planning permission was granted for the siting of 90 caravans on land described as The Elms¹. Neither the Appellants nor the Council were able to provide a plan showing the extent of the land covered by that planning permission. However, there is no doubt that the planning permission relates to part of the land at the Riverside Caravan Park. One of the conditions imposed by the 1961 planning permission only allows the use of caravans for human habitation between 1 April and 31 October in any one year ("the Seasonal Restriction").

¹ Document 1

5. In October 1972 conditional planning permission was granted for the siting of 25 additional caravans in accordance with the plans submitted². It is not possible to say with any degree of certainty whether any of the additional caravans were to be sited on the Appeal Site. The additional caravans were subject to the Seasonal Restriction referred to above.
6. I am advised that in January 1996 the Council confirmed that the siting of 40 touring caravans on some undefined area of land at the Riverside Caravan Park would be permitted development. However, no copy of the decision or the plan to which it relates is currently available.
7. In June 1997 the Council issued a Certificate of Lawful Existing Use or Development in respect of the, "Use of Site for 40 touring caravans in conjunction with other uses" ("the 1997 LDC"). When the 1997 LDC was issued it was for an existing use. The "Site" referred to in the 1997 LDC is the Appeal Site. The "other uses" referred to are not known. The plan referred to in the 1997 LDC indicates that:
 - a) The Southern Parcel was surrounded by caravans.
 - b) The Northern Parcel was adjacent to caravans on two sides and an amenity block on a third side.
8. In April 2000 planning permission was granted for the stationing of a mobile home for permanent occupation by the site warden³. The siting of the warden's mobile home is on land outside the Appeal Site.
9. In May 2014 the Appellants made an application for a Certificate of Lawfulness of Proposed Use for the Appeal Site in very similar terms the current appeal proposal. The Appellants appealed the non-determination of that application. The appeal was dismissed on 24 July 2015 ("the Dismissed Appeal"). The Dismissed Appeal was not challenged. Whilst the Appellants do not agree with the Inspector's decision in respect of the Dismissed Appeal they agreed at the Hearing that the Dismissed Appeal is a material consideration in the determination of this appeal.
10. I was provided with a copy of Caravan Site Licence No. 4 for the Riverside Caravan Park ("the Site Licence")⁴. The Site Licence was transferred to Mr J. Allen of the Appellants on 1 November 1997. The copy of the Site Licence did not contain a copy of the plan referred to in Condition 4. This plan⁵ was supplied by the Council after the appeal Hearing had closed and a copy was sent to the Appellants. I will refer to the land at the Riverside Caravan Park identified on the Site Licence plan as "the Site Licence Land". I noted that:
 - a) Reference was made in the Site Licence to the 1961 and 1972 planning permissions referred to above.
 - b) The Site Licence Land can only be used as a seasonal holiday caravan site between 1 April and 31 October.

² Document 2

³ Document 4

⁴ Document 3

⁵ Document 9

- c) The maximum number of caravans on the Site Licence Land at any one time should not exceed 115 (including the mobile home for the site warden).
- d) Roads within the Site Licence Land have to be designed to provide adequate access for fire appliances. Further, roads have to be provided so that no caravan standing is more than 50m from a road.
- e) Where possible every caravan shall stand on a hardstanding of suitable material. However, hardstandings may be dispensed with if the caravans are removed during the winter or if they are situated on ground which is firm and safe in poor weather conditions.
- f) Sites for caravans shall be provided with an electricity supply sufficient in all respects to meet the reasonable demands of the caravans situated on them.
- g) Only one car may be parked between adjoining caravans provided that the door to the caravan is not obstructed. Suitably surfaced parking spaces shall be provided where necessary to meet the additional requirement of the occupants and their visitors.

11. The Site Licence Land:

- a) Includes the Appeal Site.
- b) Does not include all of the land at the Riverside Caravan Park currently owned by the Appellants.
- c) Identifies the Northern Parcel as "36 Touring Caravans".
- d) Identifies the Southern Parcel as having no caravans on it.

12. I consider that the current caravan site use at the Riverside Caravan Park is carried out on to Site Licence Land.

13. The onus of proof in this case rests with the Appellants and they have to show that the proposed use of the Appeal Site would be lawful.

14. The standard of proof in this case is on the balance of probabilities.

15. I was informed by the Appellants that:

- a) Within the Southern Parcel there are 15 static caravans and an empty pitch on which a further static caravan is to be sited.
- b) Forty static caravans could be accommodated within the Appeal Site.

16. I was not provided with a plan that illustrated how 40 static caravans could be sited within the Appeal Site.

17. I have explained above that there are already static caravans within the Southern Parcel. No static caravans were sited on the Northern Parcel. Both parties were content that the application should be determined on the basis that the proposed use had not been fully implemented and that Section 192(1)(a) of the 1990 Act was the appropriate statutory provision for making the application.

Matters Arising Out of the Dismissed Appeal.

18. The Inspector who determined the Dismissed Appeal noted that there may have been some physical changes to the Appeal Site since the 1997 LDC was granted. These changes included the realignment of internal roads, the formation of hardstandings for static caravans, car parking areas and the installation of services.
19. The Appellants explained that these works were probably carried out as permitted development pursuant to Part 5 Class B of the Town and Country Planning (General Permitted Development) Order. The Council did not dispute this.
20. The Dismissed Appeal was based on written representations and a site visit carried out by the appointed Inspector. The appointed Inspector did not have the benefit of being able to explore many of the matters which she raised in the Dismissed Appeal. I was able to do this at the Hearing. I also had the benefit of listening to legal representations made at the Hearing by both parties.
21. The terms of the proposed use includes the possible use of the Appeal Site by 40 touring caravans. The Council take no issue that the Appeal Site could be used in that way – it would accord with the 1997 LDC. There is no evidence before me that the Appeal Site has been used for any use other than as a caravan site since the 1997 LDC was issued. Therefore, my decision is based on the use of the Appeal Site using 40 static caravans.

Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements and procedural requirements ("Circular 10/97")

22. I am aware that Circular 10/97 has been revoked. However, I consider that some of its contents are useful in understanding the legislation relating to Sections 191 and 192 of the 1990 Act and that there has been no material change to the relevant statutory provisions since Circular 10/97 was published. The general purpose of these statutory procedures is, amongst other things, to enable persons to ascertain whether specific uses are, or would be, lawful.
23. A Lawful Development Certificate is particularly valuable because its effect is similar to a grant of planning permission. It is therefore vital that the Certificate indicates, amongst other things, the precise details of what use is found to be lawful, why, and when. For example, if a Certificate is for a use of land - unless the use falls within one of the "Use Classes" specified in the Town and Country Planning (Use Classes) Order 1987 ("the UCO") current at the time, it is important for the Certificate to state the limits of the use at a particular date. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference, specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies, or changes in some way to the point where a "material" change of use takes place, the Local Planning Authority may then take enforcement action against that subsequent breach of planning control (which a less precise Certificate might well preclude). A Lawful Development Certificate must therefore be precisely drafted in all respects.

National Planning Practice Guidance ("the NPPG")

24. The NPPG explains, amongst other things, that:

- a) An application needs to describe precisely what is being applied for and the land to which the application relates.
- b) Precision in the terms of any Certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it.

25. The description of use needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The Certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "Use Class".

Reasons

Can the Appeal Site lawfully be used for the siting of up to 40 static caravans simply because the 1997 LDC identifies a caravan site use?

26. A caravan site use does not fall within any Use Class as defined in the UCO.

27. The Appellants' argument throughout the written representations was that the 1997 LDC allowed the Appeal Site to be used as a caravan site. The reference in the 1997 LDC to "touring caravans" and the number of touring caravans being 40 does not act as a condition which restricts the caravan site use of the Appeal Site to touring caravans or 40 such caravans. Accordingly, so long as the Appeal Site is used as a caravan site there is no material change of use.

28. In my assessment the Appeal Site is not a separate planning unit from the remainder of the caravan site at the Riverside Caravan Park. It is simply two areas of land within the Riverside Caravan Park that have caravans sited upon it. There are some physical features that form some of the boundaries of the Appeal Site. However, the boundaries of parts of the Southern Parcel are simply an undefined route across a grassed area with static caravans on those parts of the adjoining land which fall outside the Southern Parcel. One of the boundaries of the Northern Parcel again simply runs through a grassed area and at the time of my site visit there were touring caravans that straddled this undefined line.

29. The Appellants' view is that the difference between the Appeal Site and the remainder of the Riverside Caravan Park is that the 1997 LDC allows the Appeal Site to be used throughout the whole of the year whereas the caravan site use for the remainder of the caravan site at the Riverside Caravan Park is subject to the Seasonal Restriction. I note that the Seasonal Restriction as referred to in the Site Licence prima facie relates to the caravans on the Appeal Site. This is not a matter that has influenced my decision in this case.

30. I accept the Appellants' view that the terms of the 1997 LDC means that the lawful use of the Appeal Site is as a caravan site. However, the characteristics of the 1997 caravan site are explained in the 1997 LDC and cannot be ignored. The character or characteristics of the 1997 caravan site was its use by touring caravans which were limited in number to 40.

31. In R (on the application of Tapp) –v- Thanet District Council⁶ (“the Thanet Judgement”) Mr Justice Sullivan (as he then was) refers to an example of a Section 192 application for a “caravan site” and how that description without explanation might open the door to unfettered intensification of the caravan site use. However, he explains that a Local Planning Authority faced with such an application could ask the applicant to be more precise in their description of the proposed use e.g. “a caravan site for 12 touring caravans”. Increases in the number of caravans may still be lawful provided such increases do not result in a change in the character of the use described in the Certificate.
32. Put simply, the Appellants’ approach is that the Appeal Site is:
- a) A caravan site (by virtue of the 1997 LDC), and
 - b) there is no control over what type or number of caravans that can be sited on the Appeal Site.
33. I have read the transcripts of the decisions in the High Court⁷ and the Court of Appeal⁸ in the case of Hertfordshire County Council (1) –v- Secretary of State for Communities and Local Government (2) and Metal and Waste Recycling Limited (3). What is absolutely clear from these decisions is that it is possible for land to be used for the same generic description e.g. a scrapyard but the way in which it is used can amount to a material change of use. The same would apply to a caravan site use.
34. I therefore reject the Appellants’ argument that just because the overall use of the Appeal Site with static caravans sited on it would remain that of a caravan site that does not mean that the resulting caravan site use falls within the terms of the 1997 LDC. It is a matter of fact and degree and the application of a planning judgement as to whether the character or characteristics of the resulting caravan site use amounts to a material change of use from a caravan site use identified in the 1997 LDC.
35. Accordingly, the caravan site use of the Appeal Site in accordance with the 1997 LDC would not necessarily permit 40 static caravans to be used for human habitation as the impact of the static caravans, for reasons explained below, could be materially different from that of 40 touring caravan on the Appeal Site.
36. I therefore conclude, for the reasons explained in this Appeal Decision, that the Appeal Site cannot lawfully be used for the siting of up to 40 static caravans simply because of the caravan site use identified by the the 1997 LDC.
- Would the use of the Appeal Site for the siting of up to 40 static caravans result in a material change of use of the caravan site use at the Riverside Caravan Park.*
37. As explained above the Appeal Site is enclosed by both touring caravans and static caravans. The main differences between these types of caravans as currently used at the Riverside Caravan Park are:
- a) As a general rule touring caravans are smaller than static caravans.

⁶ Document 10

⁷ Document 5

⁸ Document 6

- b) That the static caravans are sited in a regular/regimented fashion because they remain at the Riverside Caravan Park for significant periods of time whereas the touring caravans are sited in a much more haphazard way because they come and go.
 - c) That the vast majority of the touring caravans at Riverside Caravan Park are parked on grass whereas the static caravans have hardstandings to support the weight of the structures.
 - d) That many of the static caravans have:
 - Ramps or flights of stairs so that the occupiers of the static caravans can, with ease, get in to and out of them.
 - Raised decking affixed to them so that the occupiers can sit outside the static caravans on the raised decking.
 - Outside secure storage containers close to, or attached to, the static caravans, so that the owners/occupiers can leave goods behind when they are not at the Riverside Caravan Park.
 - e) In addition some of the static caravans have small cultivated gardens next to them with washing lines, garden ornaments and garden furniture in them such as chairs, benches and picnic tables.
38. In summary, the static caravans convey a greater sense of permanence than the transient use of the grassed areas by touring caravans and the land on which they are sited has a less open character.
39. I have explained however that the proposed change to static caravans from touring caravan on the Appeal Site has to be judged in the context of the caravan site at Riverside Caravan Park as a whole. The Southern Parcel is already surrounded by static caravans and I do not consider that its use by static caravans would result in a material change to the characteristics or the character of the caravan site use at Riverside Caravan Park as a whole.
40. The Northern Parcel has more touring caravans near it than static caravans although there are a line static caravans on raised land on the opposite side of an internal road immediately to the west of the Northern Parcel. However, there is no control over the type of caravans which could be sited on the extensive grassed area to the east of the Northern Parcel.
41. Having regard to the size and extent of the caravan site at the Riverside Caravan Park and the types of caravans already lawfully sited on the caravan site I do not consider that the use of the Northern Parcel by static caravans would amount to a change of use in the character or characteristics of the caravan site use at Riverside Caravan Park as a whole.

Overall Conclusions

42. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant the LDC in respect of the use of the Appeal Site as a caravan site (to include 40 caravans whether static or touring) for human habitation at Riverside Caravan Park, Tiddington Road, Tiddington, Stratford-Upon-Avon, CV37 7AB 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 and grant the Appellants the LDC.

Other Matters

43. I have also had regard to the Appeal Decisions relating to Stansby Park, The Reddings, Cheltenham⁹ and Pencnwc Holiday Park, Cross Inn, Llandysul¹⁰ but these do not change my overall conclusions explained above.

Formal Decision

44. The appeal is allowed and attached to this Appeal Decision is the LDC describing the proposed use which is considered to be lawful.

Tim Belcher

Inspector

⁹ Document 11

¹⁰ Document 12

APPEARANCES

FOR THE APPELLANTS

Mr A. Stevens DipTP, MRTPI, MRICS	AS Planning Limited
Mr N. Allen	Avon Estates Limited
Ms H. Sargent	of Counsel

FOR STRATFORD-ON-AVON DISTRICT COUNCIL

Ms T. Swan BSc(Hons), MA, MRTPI	Senior Planner
Ms T. Osmund-Smith	of Counsel

DOCUMENTS

Document 1	-	Planning permission (March 1961).
Document 2	-	Planning permission (31 May 1972).
Document 3	-	Site Licence (1 November 1997).
Document 4	-	Planning permission (3 April 2000).
Document 5	-	Hertfordshire County Council (1) –v- Secretary of State for Communities and Local Government (2) and Metal and Waste Recycling Limited (3) – High Court.
Document 6	-	Hertfordshire County Council (1) –v- Secretary of State for Communities and Local Government (2) and Metal and Waste Recycling Limited (3) – Court of Appeal.
Document 7	-	The Council’s Legal Propositions.
Document 8	-	The Council’s Comments on Pencnwc Holiday Park Appeal Decision.
Document 9	-	E-mail from the Council dated 22 June 2017 attaching plan to the Site Licence.
Document 10	-	The Thanet Judgement.
Document 11	-	Stansby Park Appeal Decision.
Document 12	-	Pencnwc Holiday Park Appeal Decision.

Lawful Development Certificate ("the LDC")

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

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

IT IS HEREBY CERTIFIED that on 1 April 2016 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 the LDC would have been lawful within the meaning of Section 191 of the 1990 Act, for the following reasons:

The proposed use would be lawful because no enforcement action could be taken against it if it had been carried out because the proposed use would not amount to a material change of use of the caravan site use at Riverside Caravan Park and the proposed use does not constitute a contravention of any requirements of any Enforcement Notice then in force.

Signed: *Tim Belcher* - Inspector

Date: 27 June 2017

Reference: **APP/J3720/X/16/3156596**

First Schedule

The use of the land referred to in the Second Schedule as a caravan site (to include 40 caravans whether static or touring) for human habitation.

Second Schedule

Part of the land at Riverside Caravan Park, Tiddington Road, Tiddington, Stratford-upon-Avon, CV37 7AB.

NOTES

The LDC is issued solely for the purpose of Section 192 of the 1990 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, was not liable to enforcement action, under Section 172 of the 1990 Act, on that date.

The LDC 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 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 LDC is subject to the provisions in Section 192(4) of the 1990 Act which state 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.



Plan

This is the Plan referred to in the LDC dated: 27 June 2017

By Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

**Part of the land at Riverside Caravan Park, Tiddington Road, Tiddington,
Stratford-Upon-Avon, CV37 7AB**

Reference: APP/J3720/X/16/3156596

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