
Appeal Decision

Hearing Held on 16 August 2017

Site visit made on 16 August 2017

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: 30 August 2017

Appeal Ref: APP/L2250/W/16/3162157

Goldpark Leisure Holiday Park, (formerly known as Elham Valley Holiday Park), Canterbury Road, Wingmore, Kent CT4 6LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs William and Genty Smith against the decision of Shepway District Council.
 - The application Ref Y16/0431/SH, dated 25 May 2016, was refused by notice dated 26 July 2016.
 - The development proposed is described as "substitution of a static caravan in place of a touring caravan for use as a warden unit".
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Decision

1. The appeal is dismissed.

Applications for costs

2. At the Hearing applications for costs was made by Mr and Mrs William & Genty Smith against Shepway District Council and Shepway District Council against Mr and Mrs William & Genty Smith. These applications are the subject of a separate Decision.

Background and procedural matters

3. The Council considered that the description of the development on the application form was misleading and changed it to "siting of a static caravan for use by warden". However the agreement of the appellant was not sought and the description on the Council's decision is contested. For the purposes of my decision I shall use the description provided by the appellant.
4. The linear caravan site lies in a narrow valley and a 'dry watercourse', the river Nailbourne and a field boundary demarcate the site to the north-west. The Elham Valley Road provides the south-east boundary. The land falls from the road to the river Nailbourne and then rises steeply to the northwest. A long distance footpath (the Elham Valley Way) leaves the Elham Valley Road just to the north of the Holiday Park and climbs across agricultural land up to the wooded crest of the hill.
5. The land occupied by the holiday park was previously used in conjunction with an adjacent Grade II listed Public House as a camping and touring site. In

2007, a lawful development certificate (LDC) under S191 of the Act¹ was granted. This certifies that, at the date of application, the use of the land (about 2 acres) as a camping and touring caravan site was lawful. The area subject of the LDC did not include the Public House (the Palm Tree Inn) and that is now in separate ownership.

6. The land owned by the appellants includes all the land that has the benefit of the LDC and also a rectangle of land to the north. The 'red-line' appeal site is drawn tightly around the proposed static caravan (the static), and does not include any other land. During the Hearing it became apparent, on the balance of probability, that the appeal site was partly inside the LDC land and partly to the north of it. Effectively it seems that the proposed static caravan straddled the boundary but is on land within the control of the appellants. I shall come back to this in my decision.
7. It is agreed by the parties that the proposed static falls within the definition of a caravan in The Caravan Sites and Control of Development Act 1960.
8. Much of the evidence presented to the Hearing is concerned with whether or not the siting of a static on the appeal site would amount to a material change of use that may or may not require planning permission. However an application for planning permission has been made and this has to be determined in the light of S38(6) of the Planning and Compulsory Purchase Act 2004 which says that applications for planning permission should be determined in accordance with the adopted development plan unless material considerations indicate otherwise.
9. In these circumstances whether or not a static would be lawful, given the terms of the LDC, is not a matter I can determine in this appeal. Notwithstanding this, the appellants say that this is a fall-back position that should be accorded due weight. I address this argument below.
10. At the time of my visit, in mid-August there were a total of 7 'caravans' on the site². The appellants say that a warden occupies one touring caravan. The evidence suggests that of the remaining 6, 3 are 'semi-permanent' and the remaining 3 have been on site for a short period. The appellants say that the site has been open for business since February 2016. The site licence limits occupation to 45 touring units between 1 February and 31 December but the LDC has no restriction on numbers or when the park can be open to touring caravans.
11. The parties agree that the effect of the development on the significance of the listed building (the former Palm Tree Inn) is not harmful. I see no reason to disagree and the effect on the listed building is a neutral factor in this appeal.

Main Issues

12. The main issues in this appeal are:

- The effect of the proposed static caravan used as warden's accommodation on the Kent Downs Area of Outstanding Natural Beauty and Special Landscape Area (AONB); and
- Flood risk.

¹ Town and Country Planning Act 1990

² Including a converted bus

AONB

13. Shepway Core Strategy (SCS) Policy CSD4 says, amongst other matters, that the aim is to ensure that the conservation and enhancement of natural beauty in the AONB will take priority over other planning considerations. The gist of the appellants' argument is that the effect of a static on the highly designated landscape would not be materially different to that of a touring caravan, particularly if an awning is erected. Moreover there would be opportunities to screen or mitigate the effect of a static.
14. In turn the Council said that the effect of a static would be highly intrusive in the AONB and it would be a permanent structure and thus unlike the temporary touring caravans. The appellants indicated that a garden area would be created to serve the static but this would be located outside the tightly drawn appeal site. The Council drew attention to an appeal decision³, which it says highlighted the visual difference between touring vans and statics. In particular, it said as a matter of fact and degree, a static would be much larger and bulkier and look far more built-up and permanent sitting on a concrete footing with piped services and surrounded by domestic paraphernalia. Moreover, such a structure would not be of a high standard of design necessary in the sensitive landscape.
15. From what I saw the appeal site would be highly visible in northerly views from Elham Valley Road and, because the land drops from the road, landscaping works are unlikely to provide effective screening. Moreover in the winter months when it is highly probable that there would be few, if any, touring vans on the site the proposed static would remain a feature of the site⁴. In views from the long distance footpath to the north, the site is partly screened by mature deciduous trees growing alongside the river Nailbourne during the summer months. However for about 5-6 months each year the proposed static would be highly visible from this path.
16. I have little doubt, from the evidence before me and what I saw on and around the site that the visual effect of a static unit would be considerably greater than the more ephemeral impact of a touring van and its associated canvas awning. The mass, permanence and domestic appearance and character of the static would be highly intrusive and would seriously damage the open and undeveloped natural beauty of the landscape.
17. However the appellants say that the static is necessary and this need justifies the development. In particular the terms of the caravan site licence require an on-site presence to provide adequate supervision of the site. But I give little weight to this argument because such supervision could be provided (as now) by a warden living on site in a touring van or by personnel manning the existing site office. Whilst living quarters located in a static van could well be more comfortable there is no evidence to suggest that the appellants have been unable to attract a live-in warden to occupy a touring van on the site.
18. The appellants described the business as embryonic and confirmed that the existing warden did not have a contract. In these circumstances it seems to me that it is debatable whether there is an essential need for a rural worker to

³ APP/E2205/X/06/2029392 dated 3 July 2007

⁴ Both the Council and local residents said that occupancy on the caravan site tended to be very low with an average of about 6-7 vans at any one time. This accords with what I observed during the August summer holiday season.

live permanently on the site. In coming to this view I have taken account of criminal incidents that are said to have taken place on the site. But only one of these has occurred since the appellants opened the site for business and in any event this occurred whilst a warden was employed. Finally, and in the absence of a business plan, accounts or assessment of economic viability, the essential need for a static van to house a warden has limited weight.

19. As I have observed above SCS Policy CSD4 says that that the conservation of the AONB takes priority over other planning considerations. In turn the National Planning Policy Framework (the Framework) says that great weight should be given to conserving landscape and scenic beauty in the AONB. The objective of Shepway District Local Plan Review (LPR) Policy C04 has similar aims.
20. For the reasons I have also given the suggested need for a static van has not been established and in any event does not outweigh the aims of Shepway District Local Plan Review 2006 (LPR)⁵ Policies C01 because the appellants have not demonstrated an overriding social or economic need. I give little weight to the '*VisitBritain Tourism planning*' document relied upon by the appellants because this is not a statutory document and appears to be simply helpful guidance for new entrants into tourism. Because the proposed static would cause serious and intrusive harm to the AONB and thus conflict with both the development plan and SCS Policy CSD4 in particular, and the Framework, my findings on this first issue weigh heavily against permission.

Flood risk

21. The appeal site comprises land identified as being in Flood Zone 3. This land is therefore classified as being at the highest risk of flooding. As I saw, the appeal site is located very close to the river Nailbourne and probably on a site which corresponds to about the lowest point of the caravan park.
22. The identified flood risk is not challenged by the appellants. However they say that the static unit could be raised on jacks in the event of any possible flooding due to the Nailbourne bursting its banks.
23. The Framework says that inappropriate development in area at risk of flooding should be avoided by directing development away from areas of highest risk. The Environment Agency (EA) also says that the change of use from a touring caravan to a static caravan constitutes a change from a more vulnerable use (touring caravan) to a highly vulnerable use (static caravan in continual use). The Framework says if it is not possible for a development to be located in zones with lower probability of flooding, it is necessary to provide a site-specific flood risk assessment that demonstrates the development will be safe for its lifetime. As part of this, safe access and escape routes should be provided. The EA also says that other parts of the wider caravan site are located in lower flood risk zones and thus the proposal would fail the sequential test that aims to steer development to areas with the lowest probability of flooding.
24. The appellants have provided no details of flood mitigation measures, no flood risk assessment and there is no provision for escape routes in the event of flooding. I do not find the argument that a static van can be moved or

⁵ For the purposes of my decision I find that the relevant policies are broadly in line with the objectives of the Framework.

relocated as readily as a touring van cogent and the suggested 'jacking-up' of the unit would take time and would not overcome the lack of escape routes. For these reasons I accept that the use would be a highly vulnerable use and is not comparable to residential occupation of touring van which is, by its very nature more mobile.

25. In these circumstances the proposed static would conflict with the aims of SCS Policy SS3 which aims to ensure, amongst other matters, that proposals are safe and do not result in risk to life. For similar reasons the proposed development does not comprise sustainable development as envisaged by SCS Policy DSD and thus it also conflicts the Framework. Consequently this main issue also weighs heavily against permission.

Other matters

The fall-back

26. I have noted the appellants' submissions that there is a fall-back position in that they claim that a static can be put on the site in place of one of the touring caravans without planning permission. Even if I had accepted that premise I would still have to consider the proposal in the light of current planning policy because I must determine the planning appeal in the light of its planning merits. This is because the appeal before me is under S78 of the Act and as I have noted above a determination has to be made in the light of S38(6).
27. Moreover I have no power to make a determination, in the light of the terms of the LDC, as to the lawfulness of a static on this site. The House of Lords judgment in *Reprotech*⁶, says that the only way in which a binding determination as to whether planning permission is required is by way of a formal application under S191 or S192 of the Act. Thus if the appellants wished to rely on this as a fall-back the correct procedure would have been to test this by the submission of an application for an LDC prior to any planning application.
28. Notwithstanding this, the appellants sought to rely upon the judgment in *Cotswold Grange Country Park LLP v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin). However that case was concerned with whether a particular planning permission restricted the number of caravans on a site⁷, and it was not, as was suggested at the Hearing, a case concerning the interpretation of an LDC. Nor do any of the other appeal decisions relied upon by the appellants help them in terms of an interpretation of the 2007 LDC. Thus there is no demonstrable evidence in the absence of a formal determination under S192, that the suggested fall-back position is available to the appellants and it has little or no weight in this appeal.

⁶ Paragraph 32, *R v East Sussex County Council ex parte Reprotech (Pebsham) Ltd* [2000] HOL 28.2.02

⁷ As such it reconfirmed the principle established by *I'm Your Man Ltd v Secretary of State for the Environment* [1999] 77 P.7 C.R.R 251

Amended plans

29. As a result of the evidence provided to the hearing it appears, on the balance of probability, that the appeal site is not located wholly within the 2007 LDC area. In conceding this, the appellants said that this was simply a drafting error. Accordingly a plan was prepared and submitted to the Hearing which corrected the proposed site for the static unit. Neither the Council nor the local residents considered the amendment, which proposed the re-siting of the development about 3.5m to the south, to be material and no objection was raised.
30. However, the suggested amended siting would not overcome either the seriously adverse effect on the AONB or reduce flood risk. Thus even if I were to accept the amended plans they would not alter my findings on the merits of the proposal and would not change the outcome of this appeal.

Conclusion and decision

31. I have considered all the other arguments put forward by the appellants including suggested landscaping and cladding of the static unit, but such conditions would not overcome the serious and intrusive effect on the AONB. The landscaping, by reason of the site levels dropping from the road would not screen the development and the cladding would result in an unduly domestic character in this undeveloped part of the AONB.
32. In terms of flood risk, I note that at application stage the appellants said that they would work with the EA to ensure that a suitable Flood Warning Evacuation Plan is in place but there is no evidence before me that this intention has been progressed. In any event the site would fail the sequential test in the Framework.
33. I have also taken into account planning permissions granted by the Council including those at Black Horse Farm and Orchard Caravan Site. But the circumstances in these appear to bear little resemblance to those before me and both relate to long established caravan sites, where there was a demonstrable functional need for a warden and/or existing statics on the site. In any event it is a well-known principle that each appeal must turn on its own facts and merits.
34. Consequently for the reasons I have given the appeal is dismissed.

Sukie Tamplin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Rachel Rowles Davis LLM	Solicitor
Mr & Mrs William and Genty Smith	Appellants in person

FOR THE LOCAL PLANNING AUTHORITY:

Paul Howson	Senior Planning Office, Shepway District Council
Claire Dethier	Planning Team Leader, Shepway District Council

INTERESTED PERSONS:

Mrs S Hayter	Clerk to Elham Parish Council
Mr D Plumstead	Shepway Environment and Community Network
Cllr B Swan	Parish Councillor
Mr D Otteson HCIMA	Local Resident
Mr R Greaves	Local Resident
M Swan	Local Resident
Mr J Hayter	Local Resident

DOCUMENTS submitted at the Hearing

- 1 Tourism planning guidance published by VisitBritain and VisitEngland
- 2 Three plans showing comparison of LDC and appeal site
- 3 Proposed/corrected appeal site
- 4 Copy of pre application advice dated 7 December 2015
- 5 Costs application by Shepway District Council
- 6 Signed Statement of Common Ground