



Appeal Decision

Hearing Held on 11 February 2020

Site visit made on 11 February 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 21 February 2020

Appeal Ref: APP/X1118/X/18/3217206

Ruda Holiday Park, Moor Lane, Croyde, Devon EX33 1NY

- 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 Parkdean Holiday Parks Ltd against the decision of North Devon District Council.
 - The application Ref: 64385, dated 12 January 2018, was refused by notice dated 31 May 2018.
 - 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 land for siting caravans on the service field for the provision of short let holiday accommodation between 1 February and 15 January the following year.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use describing the proposed use which is found to be lawful.

Main Issue

2. Under s192(1)(a) of the 1990 Act, if any person wishes to ascertain whether any proposed use of buildings or other land would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use in question. In this case the proposed use is the siting of caravans for short let holiday accommodation on a site known as the service field at Ruda Holiday Park.
3. The appellant's case is that a LDC should be granted because the proposed use is covered by a planning permission, Ref: 56528, granted by the Council on 27 January 2014. The outcome of the appeal turns on what the 2014 planning permission granted.
4. The determination of the appeal is based solely on the ground whether the proposed use would be lawful. In such legal grounds there is no place for considering the planning merits of the development, such as the visual effect of more caravans in the Area of Outstanding Natural Beauty.

Background

5. In short, prior to 2014, the holiday park had been subject to several planning permissions that set different opening times for the lodges, caravans and camping, as well as the built facilities such as the swimming pool and clubhouse. The 2014 planning application described the proposal as *"Extension of the time limits during which the holiday park may be open"*. For whatever reason, that description was changed by the Council and the planning permission granted was for *"Application to allow the use of the lodges, static & touring caravans between 01 February and 15 January each year and to allow use of the swimming pool, club house & other communal facilities on the park within these revised opening periods (amended description) at Ruda Holiday Park, Moor Land, Croyde, Braunton."*
6. The planning permission has four conditions. Condition 1 is the standard three years time limit for commencement. Condition 2 requires the development to be carried out in accordance with the plans submitted as part of the application. There was only one plan with a reference 6800-LP. Condition 3 requires the lodges, static and touring caravans occupying the site related to the permission to be used for short let holiday accommodation only between the revised opening times. Condition 4 restricts the opening times of the clubhouse, swimming pool etc to the same as for the caravans and lodges. There is no dispute that the planning permission has been implemented because the holiday park has been operating within the opening times granted by the permission.
7. Plan Ref. 6800-LP shows a red line around various areas of land, including the service field where it is proposed to locate caravans in the LDC application. Before 2014 this field had not been covered by any planning permission associated with Ruda Holiday Park.

Reasons

8. Taking a natural and ordinary meaning of the words in the planning permission, it clearly relates to the use of the lodges, static and touring caravans between certain dates. The use is defined by condition 3 which is for the provision of short let holiday accommodation. There is no ambiguity to my mind that is what the planning permission is for. Furthermore, condition 2 requires the development permitted to be carried out in accordance with plan ref: 6800-LP. That plan delineates the physical land area to which the grant of planning permission relates, which includes the service field. Except for what appear to be the location of the timber lodges, buildings and service roads, the plan does not demarcate or specify the locations of any caravans. Moreover, there are no conditions on the planning permission that limit the numbers of caravans or their distribution across the land within the site defined on the plan.
9. The Council highlight *".....the use of the lodges, static & touring caravans..."* and suggest that the planning permission applies to the caravans and lodges on the same areas of the site which does not include the service field, and all that was applied for in 2014 was an extension of the time limits under which the site could operate. However, the Council accept that it was not an application under s73 of the 1990 Act for the development of land without complying with conditions subject to which a previous planning permission was granted.

10. Also, unlike in the judgement of *LB of Lambeth v SoS for Housing, Communities and Local Government and others* [2017] EWHC 2412 (Admin); [2018] EWCA Civ 844; [2019] UKSC 33, the Council's decision notice, on its face, does not cross refer to any previous planning permissions or their conditions. The Council further acknowledges that the application was not for operational development. Given the meaning of development under s55 of the 1990 Act, the planning permission could thus only relate to the material change in the use of any buildings or other land. On that basis, the planning permission allows the use of caravans for short let holiday accommodation across the whole of the site, including the service field.
11. The caravans are also not constrained to their previous locations. That is because, even if I was to go behind the face of the planning permission to examine what the Council say was applied for when the application was submitted and the supporting information with it, the Council changed that description and granted planning permission for the use of the lodges, static and touring caravans. It defined the use as for short let holiday accommodation within specified time limits within the area defined by plan 6800-LP. What the Council thought it was determining in 2014 and what it then granted permission for, are two different matters.
12. Furthermore, it is also well established that the description of the development does not limit the way that a permission may be exercised or the extent of the use. There is no implied or legal power to impose such limitations other than by means of planning conditions. If the Council had wanted to ensure the locations of the caravans, the permission could have been subject to restrictions on location and numbers. Even a s73 application, if granted, would have led to a fresh planning permission alongside the original permission, meaning that would have needed to control such matters. In either case the Council could also have sought to restrict the overall site area by seeking to exclude the service field from the red line, but it did not.
13. Moreover, it has long been held that the siting of caravans on land to be used for a particular purpose constitutes a change of use of the land. Moving their location within land covered by a planning permission for such a use as holiday accommodation or swapping one caravan for another, provided they still meet the definition of being a caravan and they are to be used for the same purpose, would not be development requiring planning permission each time this happened. Unless the numbers of caravans became so intense that the fundamental character of the use changes, thus constituting a material change of use, which has not been argued here, controlling the numbers of caravans or the location of their pitches could normally only be controlled by conditions. There are none of those in this case.
14. In view of the siting of caravans normally being a use of land, it also seems illogical that the 2014 planning permission could only relate to what was existing on the site at the time the permission was granted. Taking that view would mean, for example, when any touring caravans on the holiday park on 27 January 2014 left, only those same ones could come back. The same would be true for static caravans. Also, condition 3 does not place such a restriction on the planning permission. It allows for static and touring caravans occupying the site to be used for short let holiday accommodation. It seems to me that any such caravan when on the site can be used in this way.

15. I have had regard to the reason given for condition 2 on the 2014 planning permission. Its reference to being imposed to comply with the requirements of s18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is clearly a mistake. Taken that way, the reason does not introduce any ambiguity in the way that condition 2 relates to and defines the permission.
16. I have taken account of all other relevant written representations made, but none outweigh my earlier findings.

Conclusion

17. Taken in the overall round, the proposal to site caravans on the service field would be lawful because the proposed use falls within the terms of planning permission Ref: 56528, granted by the Council on 27 January 2014. Consequently, the Council's decision to refuse the LDC application was not well founded. The appeal should succeed, and I shall exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Gareth Symons

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Heather Sargent of Counsel	Landmark Chambers
Martin Taylor	Senior Director and Principal, Avison Young

FOR THE LOCAL PLANNING AUTHORITY:

Trevor Blatchford	Senior Solicitor, North Devon Council
Mary Pool	Senior Planning Officer, North Devon Council

INTERESTED PERSONS:

Jane Young	Local resident
James Collins	Local resident

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 12 January 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red (or black if copied in black and white) on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use falls within the terms of planning permission Ref: 56528, granted by the Council on 27 January 2014.

Signed

Gareth Symons

INSPECTOR

Date 21 February 2020

Reference: APP/X1118/X/18/3217206

First Schedule

The use of land for siting caravans on the service field for the provision of short let holiday accommodation between 1 February and 15 January the following year.

Second Schedule

Land at Ruda Holiday Park, Moor Lane, Croyde, Devon EX33 1NY

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, was 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 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: 21 February 2020

by Gareth Symons BSc(Hons) DipTP MRTPI

Land at: Ruda Holiday Park, Moor Lane, Croyde, Devon EX33 1NY

Reference: APP/X1118/X/18/3217206

Scale: Do not scale.

