



Appeal Decision

Site visit made on 17 February 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2020

Appeal Ref: APP/X1118/X/19/3231022

Europa Park, Woolacombe Station Road, Woolacombe EX34 7AN

- 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 Mr H Simmonds of Tranquility Parks Ltd against the decision of North Devon District Council.
 - The application Ref 65591, dated 20 September 2018, was refused by notice dated 26 April 2019.
 - 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: Use of land as a caravan site.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Main Issue

2. The main issue is whether the Council's decision to refuse a certificate of lawfulness concerning the use of the land as a caravan site is well founded.

Reasons

3. The site is set in an elevated location looking towards the coast. At the time of my site visit it consisted of a number of tarmac roadways which provide access into and around the site. There were also a number of small service and other buildings at the site and touring and static caravans were present. The layout of the site was clearly well established and related to its use for caravans and had a manicured appearance.
4. In matters such as this the onus is on the appellant to demonstrate his case, on the balance of probabilities. Planning policy or matters of judgement in relation to the planning merits of the appeal proposal are not relevant.
5. As means of background, a certificate of lawfulness was granted on 25 January 2010 for '*The Existing Use as a holiday park comprising camping and caravans.*' (the Certificate). There has been no other relevant planning history brought to my attention.
6. The Council accepts that whilst the Certificate authorises the presence of caravans on the site, and the type and number of caravans are not specified,

which is to say that they could be either touring or static caravans, the Certificate relates to a holiday park and not permanent residential usage. The Council also accepts that if the Certificate had described the lawful use as a "caravan site", then there would be no limitation on whether the site was used as a holiday or permanent residential site. The Council therefore considers that the proposal amounts to a material change of use.

7. The Certificate acknowledges the lawful use of the site for caravans, as well as for camping. The only particularisation relates to the use as a holiday park and there is nothing, for example, to indicate that this is a seasonal or otherwise restricted use. There has also been no statutory definition of holiday park brought to my attention and I am not aware that there is restriction placed on how long a person could stay or reside at the site.
8. Given the Certificate acknowledges the lawful use of caravans at the site it follows that in its natural and ordinary meaning the site must be a "caravan site". I have little evidence from the Council to persuade me why in terms of the Act¹ or planning law this would not be the case. Furthermore, whilst the appeal proposal relates to a caravan site, which I will take to mean an unfettered residential use in planning terms, whether this relates to permanent residential units or a holiday use, it still amounts to the use of caravans for the purposes of human habitation.
9. I accept that permanent residential units could however likely be the outcome. Nevertheless, in terms of the character of the use I have not been persuaded on the evidence before me that the appeal proposal amounts to a material change of use. I recognise there could be a change to the layout of the site but based on my site visit it appears to be intensively used and laid-out as such. Whilst there could be less camping taking place, the ratio of camping and caravanning activities are not prescribed and so are liable to management change. The baseline is therefore an undefined number of caravans which may be of any type, on a site which can operate year-round.
10. There is the possibility for other intensifications, such as that arising from an increase in the number of caravans at the site. However, as the Council note, this would have to relate to a considerable increase in their number. Moreover, I am not persuaded that there would necessarily be an increase in number, considerable or otherwise, given that permanent residential units, in the form of static caravans, are larger, and therefore require more space when compared against touring caravans.
11. I accept that the appeal proposal will likely result in more residents year-round at the site and with it an increase in residents accessing the site and trip generation. But, given the baseline, and the absence of evidence, even notional figurative comparisons, I am not persuaded that this factor is determinative. For the same reasons, any changes to visual appearance/amenity, on a manicured site that already contains static caravans, would not in my view give rise to the making of a material change of use, although I accept that there would be more static caravans present year-round.
12. I am therefore not persuaded on the evidence before me, on the balance of probabilities, that the appeal application amounts to a material change of use from a site for holiday park purposes to permanent residential purposes. Whilst

¹ Caravan Sites and Control of Development Act 1960 (as amended)

the Council has brought case law² to my attention, that related to the interpretation of a planning permission and the planning conditions contained therein. As there is no planning permission at the appeal site, such case law does not affect my findings.

13. Whilst the Certificate did not contemplate the use of the site for permanent residential purposes, its effect was to establish the lawful use of the site as a caravan site. I have not been made aware of any other restrictions or limitations, in planning terms, and I therefore find, as a matter of fact and degree and on the balance of probabilities, that the use the subject of this appeal is lawful. Since no development as defined in Section 55 of the Act is proposed, the appeal should succeed.

Conclusion

14. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use 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 as amended.

Formal Decision

15. 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.

Paul T Hocking

INSPECTOR

² Forest of Dean DCv SSE [1994] 1 WLUK 43



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 20 September 2018 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The lawful use of the land is as a caravan site and the appeal proposal does not amount to a material change of use. No development as defined in Section 55 of the Act is proposed.

Signed

Paul T Hocking

Inspector

Date: 16 March 2020

Reference: APP/X1118/X/19/3231022

First Schedule

Use of land as a caravan site.

Second Schedule

Land at Europa Park, Woolacombe Station Road, Woolacombe EX34 7AN

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: 16 March 2020

by **Paul T Hocking BA MSc MRTPI**

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Scale: DO NOT SCALE

