
Appeal Decision

Site visit made on 11 February 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2020

Appeal Ref: APP/K2230/X/19/3223660

**Julies, Southfield Shaw Park Homes, Harvel Road, Meopham, Gravesend
DA13 0RH**

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S Cooper against Gravesham Borough Council.
 - The application Ref. GR/20180881 is dated 9 July 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 the use of caravan site for the siting of 3 mobile homes.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr S Cooper against Gravesham Borough Council. This application is the subject of a separate Decision.

Background

3. The site is a roughly rectangular area of land in open countryside on the edge of Culverstone Green. It is within the Green Belt. The front of the site is wooded and is accessed from Southfield Shaw, a private single track road that serves a number of dwellings and is a public footpath.
4. Permission was granted in 1975 to use the land for '*stationing of caravan*'¹. It was subject to a condition (ii) restricting the occupation of the caravan to specified times of the year, but there was no condition limiting the number of caravans that could be sited. A lawful use certificate was granted in 2015² for the permanent occupation of the residential caravan.
5. There is currently a vacant mobile home on the site, which is in a state of disrepair, with the ceiling have partially collapsed and the structure is open to the elements on one side. There are also two touring caravans, a large freestanding awning, and a garage. I saw no evidence that anyone is currently living on the site.

¹ Ref 19750018

² Ref 20150580

6. The certificate seeks to establish whether it is lawful to use the caravan site for the siting of 3 mobile homes. The Council has provided a 'decision notice' which was issued after the appeal was lodged. This is not a formal decision as jurisdiction transfers from the local planning authority once the Planning Inspectorate has accepted the appeal. The 'decision notice' indicates that if it had been able to determine the application it would have refused it on the grounds that the proposal would have resulted in a material change of use, due to the effect on the character and appearance of the area resulting from increased traffic generation and visual intrusion, and the effect on the Green Belt. A subsequent application³ for a certificate of proposed lawful use or development under Section 192 of the Act was submitted to the Council and refused on 5 July 2019 for the same reasons.

Reasons

7. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal (or deemed refusal) to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. However, the planning consequences of a change in use must be considered, in order to determine whether a material change of use and thus development is involved. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
8. The appellant's case is that as there is no condition limiting the number of caravans on the site, the matter of the number of caravans should be determined by a Caravan Site Licence, and that in any event the proposal would not result in a material change of use requiring planning permission.

1975 permission

9. The 1975 permission authorised the 'use of land for stationing of caravan', and I note that 'caravan' is referred to in the singular. There is no condition restricting the number of caravans to one. It is subject to conditions (ii) and (iii) which dealt with its occupation, and both conditions refer to 'the caravan' in the singular form. Conditions (iv), (vi) and (vii) and their reasons all refer 'the caravan' or 'the permitted caravan'. Condition (iv) requires that the caravan be sited in the position shown on the submitted plan. Taking the natural and ordinary meaning of the words used and the restrictive nature of condition (iv), it is clear that the permission granted the stationing of a single caravan in a specific position, and it would be read as such by any reasonable person. The existing permission does not therefore give permission for an unlimited number of caravans on the site.
10. The appellant relies on *Cartledge v Scottish Ministers 2010*⁴ to support his argument that the number of caravans should in fact be determined by the site licence rather than through a planning permission. However, the hyperlink to the case provided by the Council in their delegated report shows that there was

³ Ref 20190475

⁴ *Cartledge, Re Appeal Against a Decision of Scottish Ministers* [2010] ScotCS CSOH 46 (01 April 2010) <https://www.bailii.org/scot/cases/ScotCS/2010/2010CSOH46.html>

a reclaiming motion by the Scottish Ministers⁵ against the decision of Lady Dorrian to allow an appeal against a decision of the Inquiry Report acting under delegated powers to refuse to grant the certificate of lawfulness. The reclaiming motion was allowed and the respondent's appeal was refused. The decision of Lady Paton was that the original application in 1972 for a caravan park was based on the accompanying plan, which was an integral part of the permission, and it was this that controlled the number of caravans, rather than a site licence. The judgement does not therefore indicate a different approach should be taken in this case.

11. It should also be noted that the lawful use certificate of 2015 related to the lawfulness of the permanent occupation of the caravan at the time of the application (10 August 2015). However, the condition is still in place on the permission, and as the mobile home on the site is currently unoccupied the breach of the condition has now ended. Any future occupation of a caravan pursuant to the 1975 permission would be restricted by the condition (ii). The permanent occupation of a caravan on the site would therefore require planning permission.

Material change of use

12. The appellant argues that increasing the number of caravans to three would not result in a material change of use. The concept of a material change of use is not defined in statute or statutory instrument. It is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously. It is well established that an increase in the number of caravans on a site can constitute a material change of use. What I therefore have to examine is the characteristics of the proposed use, as compared to the approved use, in terms of its potential planning consequences. This is not a judgement of merit but of materiality.
13. The mobile home is sited in a corner of the site, in the approximate location indicated on the plan which accompanied the 1975 permission, set away from Southfield Shaw behind an area of woodland. It is restricted to the siting shown on the plan referred to by condition (iv) of the permission. Although overgrown, there is an area of hardstanding leading from the access to the site from Southfield Shaw to the mobile home. The increase in the number of mobile homes on the site from one to three would substantially reduce its openness, which would be harmful to the Green Belt, taking into account the existence of the touring caravans, awning and garage on the land.
14. The existing mobile home is substantially hidden from view, particularly from the public footpath on Southfield Shaw, due to its location in the furthest corner of the plot from the access, screened by the strip of woodland. The site contributes to the quiet rural character of the countryside on this side of the public footpath. The submitted site layout plan indicates that the mobile homes would result in a significant change to the appearance of the land, including to the woodland and trees. The mobile homes would be spread across the width of the site and an increase in domestic paraphernalia is also likely to result. This would give rise to a more formal and urban appearance which would be apparent in views from outside the site through the access drive and from

⁵ Cartledge v Scottish Ministers [2011] ScotCS CSOH 53 (22 March 2011) <https://www.scotcourts.gov.uk/search-judgments/judgment?id=39b586a6-8980-69d2-b500-ff0000d74aa7>

surrounding land. The change in the appearance of the land would lead to a change in the character of the use.

15. In terms of traffic generation, it could reasonably be assumed that it would increase proportionately with the increase in the number of mobile homes on the site. This would result in an increase in traffic movements from the site onto Southfield Shaw, and this would be part of the change in the character of the use. The Council argues that the existing drainage system is inadequate and the additional mobile homes would increase pressure on it, which is likely to result in the need for additional cess pits and soakaways. Additional hard surfacing is also likely to be required, to provide access to the individual mobile homes. Although taken individually these changes would not be determinative, they contribute to the amount of change that would take place.
16. On the evidence before me, I conclude that the proposal would result in a change in the character of the use as compared to the previous and lawful use, so as to amount to a material change of use. It would therefore constitute development for which planning permission would be required.
17. Both parties refer to the *Childs*⁶ judgement, and although the overall number of mobile homes would be less than in that case, the increase from one mobile home to three is a significant increase in the context of this site. I do not have full details of the case at Nurstead Hill Farm⁷ in the same Borough, to which the appellant makes reference. However, I note that it was concerned with an increase of two caravans/mobile homes and that the maximum number that could be lawfully stationed on the land was fourteen, which the Council considered was not a material change of use. That is not comparable with the scale of the increase on this site.

Conclusion

18. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the use of caravan site for the siting of 3 mobile homes was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

N Thomas

INSPECTOR

⁶ R (oao Childs) v FSS & Test Valley BC [2005] EWHC 2368 (Admin)

⁷ Ref 20171236