
Appeal Decision

Inquiry Held on 10 December 2019 & 9 January 2020

Site visit made on 9 January 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 1 April 2020

Appeal Ref: APP/E1210/X/19/3227173

Tall Trees park, Matchams Lane, Hurn, Christchurch BH23 6TT

- 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 Royale Parks Ltd against the decision of Christchurch Borough Council.
 - The application Ref 8/19/0216/CLE, dated 23 January 2019, was refused by notice dated 26 March 2019.
 - The application was made under section 191(1)(a) 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 the stationing of caravans for the purposes of human habitation as a person's sole or main place of residence.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is no argument that the relevant planning conditions have been breached for some of the units, and that at least two units continue to be occupied in accordance with the planning permission and conditions. The Council's statement indicates that four units have been confirmed as being lawful with LDCs issued. Some of the other units used contrary to the conditions have applied for LDCs for permanent residential use contrary to the conditions and have been refused. There are about 15 units on the appeal land, with about two units appearing to straddle the site boundary.
3. The agreed statement of common ground identifies that planning permission was granted under reference 8/07/0111 for development described as, 'relief of condition 2 and variation of conditions 3 & 4 of application 8/06/0261'. The permission was subject to three conditions: (1) the standard time limit and (2) the caravans and chalets shall be occupied for holiday purposes only, except for 1 caravan or chalet which may be occupied by a resident site warden and (3) the caravans and chalets shall not be occupied as a person's sole or main place of residence except for 1 caravan or chalet which may be occupied by a resident site warden.
4. It is also common ground that all the units come within the definition of caravans.

Reasons

Planning Unit

5. The concept of planning unit is a device generally used to enable the appropriate area of land to be identified for the purposes of deciding whether a material change of use has occurred or not. That is a little different from this case where the main consideration relates to conditions on a planning permission. The Council's general argument is that the change of the use of some of the units for the purposes of human habitation as a person's sole or main place of residence, and for which LDCs have been issued, has created separate planning units. This means these areas are not controlled by the conditions of the associated planning permission and the remainder of the appeal land, not covered by the LDCs, is still subject to the conditions related to the associated planning permission.
6. The whole of the land forming the caravan site that includes the appeal land is owned by the appellant. The use of much of the site, including the wider caravan site beyond that identified as the application site, is in use for the stationing of caravans for residential purposes and there is a single office for the whole of the overall site, including the appeal site. Some control of the type of caravan was included, initially related to touring caravans, but some relaxation later occurred allowing some static units to be provided with time of use constraints. Some year round use is permitted, but with holiday use and non sole or main residence limitations.
7. Residents have access to the whole of the site and a communal swimming pool. The use was controlled by various planning permissions which have been granted at different times on different parts of the site. The intention of these permissions was to provide for holiday use by caravans. However, over the years conditions have not been complied with for some caravans on all parts of the site, in that year round occupation has occurred for primary residence.
8. A resident who gave evidence to the inquiry notes the caravan she lives in has recently received a lawful development certificate for use contrary to the conditions. Her only agreement to use the land is that formed with the previous owner. It relates to holiday use of the site and has not been able to be updated with the current owner to reflect the permanent residential use, because of the lack of planning permission or a LDC, allowing a site licence to be granted.
9. It seems clear to me that the use of the whole of the caravan site, including the appeal site, has been in a similar use. Over the years, that use has gradually changed in that some occupation is outside of the conditions, but some other units remain in compliance. The occupation of most of the units is in well defined pitches that have physical demarcation, but there is no physical demarcation of the communal areas of the whole site. The use by the occupiers of the units on the identified and physically defined pitches goes outside of these areas into the communal parts of the whole site. The whole site is in the ownership of the appellant and the single main use of the land is the provision of pitches for different forms of residential occupation, now not just related to holidays, but also permanent residential use.
10. It should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and

functionally. While I accept there is some physical separation at the boundaries of some of the plot pitches, this does not fully define or confine the use by the occupiers of those pitches, which spreads to other parts of the whole site. Given the ownership, the similarity of use over the whole site, the use by many individual occupiers of the whole site and that pitch positions can be altered by the owner, I conclude that the planning unit is the whole of the caravan site, including the appeal site and during the inquiry the local authority acknowledged that is the case.

11. The question then is whether the use of one or more of the caravans on the site for more than 10 years in breach of the conditions means that other caravans on the site are not covered by the relevant conditions. In this respect I consider that the case of *The Queen on Application of St Anselm Development Company Ltd v The First Secretary of State and Westminster City Council* [2003] is relevant. Briefly, in general terms this related to a development for flats with a condition that the associated parking bays, which are marked out, should be reserved for the use of those flats. A number had been used contrary to the conditions and this use had become lawful through the passage of time, so the question was whether the other parking bays could be used not in association with the flats contrary to the condition.
12. There was some question as to the wording of the condition and whether the Council wanted the whole of the car park to be retained for the benefit of the permitted flats. It was concluded that whether the condition had required all the car parking spaces to be used, each and every car parking space, or no part of the car parking accommodation shall be used, there would still have been a breach of the condition as soon as one of the spaces ceased to be used in the manner prescribed. To my mind, this is a similar situation, the condition refers to 'the caravans' and clearly intends that all the caravans are to be used in accordance with the conditions.
13. The judge noted that 'merely because one of the spaces is not used in accordance with the terms of the condition it does not follow that the Council would be at all happy to see the remainder of the car parking spaces free from effective control'. Clearly that is the same situation here, with the LDC application being refused.
14. In terms of the enforcement action being taken the judge concluded that 'applying the statutory framework to the facts of the present case, if condition 2 is breached because one car parking space ceases to be retained for use as parking accommodation by users/occupiers of the building, the enforcement notice must make it plain that the breach of condition is by reason of the use of that space, must identify the space with sufficient clarity, and require no more than that the use of that space, in breach of the condition, shall cease'.
15. In this case the Council has clearly identified the specific parts of the land that have been used in breach of the conditions for more than 10 years, when issuing the lawful development certificates. I accept that in the original planning permission the number of caravans is not controlled and the positions are not identified on a plan so plot positions could change. However, the units over most of the site are in relatively fixed positions, being accessed from defined hard surfaced drives, and a substantial portion of the units on masonry basis. Some have some forms of physical enclosure around a 'garden' area, which is the case in part with some of the four units on the appeal land that

- have been granted the LDC. While I acknowledge that the units could move and numbers change the physical evidence is that this has not occurred for a long time and there is no evidence that it is going to occur in the future, other than the hypothetical argument raised. The units identified in the LDC are clearly distinguishable on the ground.
16. I note the hypothetical case put that someone could live on one part of the site for a few years, then move to another part of the site for a few years and again another achieving 10 years occupation in breach of a condition. However, a similar argument could be used with car parking where either the same person or different persons used different car parking spaces for different periods amounting to a 10 years continuous period overall. If that was the case it would have to be made out for the LDC and perhaps different areas would have to be identified depending on the facts. There is no actual case being made on these grounds to be considered in this case.
17. The Council has clearly identified the parts of the land to which the conditions do and do not apply through the LDCs. I therefore conclude that because some identified parts of the site have been used contrary to the conditions, does not mean that the other parts of the site do not remain controlled by them.
18. The appellant also argues that a unit and its occupier could move to another part of the site that is outside of an area identified by an LDC or another unit could be moved onto the area of land deemed lawful. I accept that is the case. It is the use of the land that is controlled and the individual area is identified. If an occupier moved off the land with the LDC and placed the unit on land without the LDC then their use would become unauthorised. Similarly, if someone else moved onto the LDC land with a new unit for use not in compliance with the conditions that would not be an unlawful use, if the non-complying use directly followed the previous one with no intervening compliant use.
19. I acknowledge that users of the site areas with the LDCs also use the communal areas. The appellant suggests that means that their use not in compliance with the conditions is of the whole of the communal areas. I do not accept that. As with a car park there are communal parts that are used outside of a particular space, that does not mean that the rest of the car parking spaces would then cease to be controlled by the conditions.
20. I have taken into consideration the appeal decision ref APP/A0665/X/09/2109738 which covers a similar situation to that at the appeal site and that this was decided after the St Anselm Development case, and its conclusion is contrary to the St Anselm Development decision. There is no indication that The St Anselm Development decision was or was not taken into consideration in that appeal. However, given the direct relevance of the court decision to the current situation, I place greater weight on the court judgement.

Whether Enforcement Action may be taken, Estoppel and Legitimate Expectation

21. Section 191(2) notes for the purposes of this Act uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any

other reason). The appellant argues that the Council's communications give a legitimate expectation that no further enforcement action will be taken at the appeal site and therefore this would come within the ambit of 'for any other reason' of Section 192 and therefore a certificate can be issued.

22. In terms of legitimate expectation, the appellant relies on two letters (one of 16 March 2018 and the other 10 January 2019) and Mr Lloyd's proof of evidence at paragraph 22. To my mind, in terms of setting out what, if any, legitimate expectation there may be, little weight can be placed on paragraph 22; this is a proof of evidence and not a document from the Council to the relevant parties that they should expect to place direct reliance on, and in any case in essence it is taking its cue from the two letters. I will therefore concentrate on the letters.
23. The first paragraph of the first letter explains that it is directed to those that have received an enforcement notice and that if you (the recipient) did not receive an enforcement notice you are being sent the letter as a matter of courtesy and completeness to ensure that all interested parties are informed. The letter goes on to note that following another appeal decision it gives notice that all of the enforcement notices are to be withdrawn and that no further action will be taken in respect of breach of condition notices that had also been served.
24. To my mind this letter does no more than inform that the enforcement notices are withdrawn and no action will be taken in relation to the breach of condition notices that had been served. There is nothing to indicate any expectations for the future from this letter, legitimate or otherwise.
25. The reference in the second letter relates to planning permission and lawful use of the caravan site, caravan site licensing and ground fees. The opening paragraph notes that the Council has received a number of enquiries seeking Council advice and opinion pursuant to the residential licence of the site in order that individual plot holders may benefit from a reduced ground rent, which reflects their occupation as being permanent residential rather than as holiday users.
26. After what may be called the 'preamble' the Council clearly states in paragraph 3 that 'for clarity, all persons having an interest in the land known as Tall Trees should have regard to the existing planning permissions and lawful development certificates relevant to each component part of the site. The land in ownership does not have planning permission or a lawful development certificate for all component parts'. This makes it plain what the current planning situation is and what the occupiers should have regard to.
27. The next paragraph effectively reiterates the content of the first letter in that it notes the previous enforcement notices were withdrawn in 2018 and no further action will be taken. The 'no further action' clearly relates to those notices and occupation of the land in 2016, as in the next sentence the letter notes 'the Council however reserves judgment on any further unauthorised use of the land, particularly on component parts where no development or use has occurred. It then notes that the risk of action currently is low. This is not that there will be no action, but that the risk of action is low and that is the current situation, clearly indicating that the future situation could be different.

28. On the second page the Council also explain that it cannot support the application claim that a single breach renders the whole of the component part lawful as a matter of fact. It notes that any breach will be considered on its merits on a plot by plot by basis and that where enforcement action can be taken it would be on a plot by plot basis. This clearly indicates that enforcement action may be taken, the emphasis that no such action is scheduled does not mean it can be taken that it will not be 'scheduled' in the future.
29. It also notes how existing breaches can be regularised, which would not be necessary if the purpose of the letter was not to take any further action at the site. The last sentence of page 2 is underlined and notes 'the council (being the Local Planning Authority) will take no action against occupation of land within the area edged red in Figure 2 in accordance with the circumstances of the land use when enforcement notices were formally withdrawn'. This makes it clear that the undertaking of no further action relates to the 'circumstances of the land use when enforcement notices were formally withdrawn', that does not indicate the Council's intention for the future.
30. I conclude that no legitimate expectation for the Council's future actions can be inferred directly or indirectly in relation to the Council's future actions in relation to the appeal site from these letters, but that they clearly explain the current planning position.
31. I have also considered the Council's decision not to pursue enforcement action. Section 172(1)(b) indicates that an LPA may issue a notice where it appears to them that there has been a breach of planning control and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. Clearly the Council in withdrawing the notices did not consider that it was expedient to proceed with them, or to issue further notices at the present time, but again that does not bring the situation into the ambit of 'for any other reason' of Section 191. The Council's approach to the site and enforcement action is clearly set out in the two letters considered above. The Council has a concern relating to permanent residential use in terms of impact on nearby heathlands. Any planning permission would require mitigation, so while not taking action, there is the potential that some of the units will remain in holiday use, as some are at present, limiting their impact. It is appropriate not to take action in the circumstances.
32. Overall, I conclude that while part of the land has LDCs allowing permanent use for a sole residence, other units on the appeal site do not, and any such use of them is currently unauthorised and not lawful. The fact that some units are now occupied in breach of the conditions does not mean the conditions do not apply to the other units on the site. In addition, there is no reason for any legitimate expectation from the Council's correspondence with those with an interest in the land, that effectively an LDC certificate should be issued or that no forms of enforcement action would not be considered in the future.
33. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of land for the stationing of caravans for the purposes of human habitation as a person's sole or main place of residence 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.

34. I have understood the resident's situation pertaining to the relationship between the site licence and planning control and sympathise with the difficulties that result. However, my role in this decision is to determine whether the use described by the appellant as the current use of the site is lawful.

Graham Dudley

Planning Inspector