
Appeal Decision

Inquiry Held on 25 and 26 February 2020

Site visit made on 26 February 2020

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 29 June 2020

Appeal Ref: APP/J9497/X/18/3217988

**Dartmoor Country Holidays, Magpie Leisure Park, Bedford Bridge,
Horrabridge, Yelverton, Devon PL20 7RY**

- 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 Barton Park Estates Ltd against the decision of Dartmoor National Park Authority.
- The application Ref 0411/18, dated 31 July 2018, was refused by notice dated 23 November 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 use of land for the stationing of up to eighty caravans for the purposes of human habitation.

Summary of Decision: The appeal is dismissed

Procedural matters

1. The Inquiry at which this appeal was heard also dealt with a separate appeal concerning an application for a LDC for the existing use of "The Barn", on land adjacent to this appeal site, as an unrestricted dwellinghouse.¹ That appeal is the subject of a separate Decision Letter.
2. At the Inquiry an application for costs was made by the Appellant against the Dartmoor National Park Authority ("the DNPA"). That application is also the subject of a separate Decision Letter.
3. All evidence to the Inquiry was given on oath.

Main issues

4. It is important to be clear that the subject of this appeal is an application for a LDC (Certificate of Lawfulness), not an application for planning permission. If it were an application for planning permission, my decision-making process would involve an assessment of the planning merits of the proposal (such as, to use examples raised at the inquiry, the impact upon biodiversity, and any increase in the risk of flooding) and its compliance with national and local planning policies. However, since it is an application for a LDC, none of those considerations are before me: rather, my assessment is confined to the narrow

¹ Ref APP/J9497/X/18/3219534

issue of determining whether the use described in the application would be lawful if instituted at the date of the application.²

5. I shall approach this task by looking firstly at the status of the various planning permissions (and their attached conditions) which have been granted for the land. This will establish the existing lawful use of the appeal site, and enable an assessment of whether or not the proposed "stationing of up to eighty caravans for human habitation" would fall within that existing lawful use. If it does not, it will then be necessary to determine whether the proposed use would constitute a *material* change from the existing lawful use. This is because a non-material change could be made lawfully, but a material change of use would amount to development, for which a new grant of planning permission would be required.
6. In simple terms then, if the proposed use falls within the existing lawful use of the land, the LDC should be granted. If it does not, but the proposed use would not involve a material change to the existing lawful use, the LDC should be granted. In all other circumstances, the LDC should be refused.

Reasons

The status of the existing Planning Permissions

7. The appeal site is subject to a number of planning permissions. The earliest on record dates from July 1981, although it is common ground that its terms indicate the land was by then already in use as a caravan site.

The 1981 Permission

8. "The 1981 Permission",³ dated 13 July 1981, grants planning permission for *Proposed amendment of existing provision at caravan site to allow for 8 residential units, 26 static holiday vans and 10 new pitches for touring caravans, Magpie Caravan Park, Bedford Bridge, Horrabridge*. It is subject to two conditions. Condition (a) provides that the development must begin within five years of the date of the permission. Condition (b) states:

Before the permission hereby granted is implemented, the access on to the A. 386 shall be improved in accordance with details which shall previously have been submitted to and approved by the Local Planning Authority.

9. The Appellant contends that this 1981 Permission is the governing permission for the appeal site, but the NPA maintains that it was in fact never implemented.
10. A planning permission is controlled by, and is subject to, the conditions that are attached to it. Case law⁴ has established that if the development carried out contravenes a pre-commencement condition which goes to the heart of the permission granted, that development will not have commenced the development authorised by the permission: rather, it will amount to development without planning permission.⁵ However, if the development carried out contravenes a condition which is not a true pre-commencement condition, or which does not go to the heart of the permission, that

² Per Section 192(2) of the Town and Country Planning Act 1990 ("The 1990 Act").

³ Ref: 3/35/0588/1981/5826/1

⁴ *F.G. Whitely & Sons Ltd v Secretary of State for Wales* [1990] JPL 678; *R (on the application of Hart Aggregates Ltd) v Hartlepool BC* [2005] EWHC 840 (Admin); *R (oao Greyfort Properties Ltd) v SoS CLG* [2011] EWCA Civ 908

⁵ It is common ground that while there are a number of exceptions to this general principle, none of them are applicable here.

- development can be regarded as having implemented the permission; the breach of planning control would in that case be a breach of condition, rather than development without permission.
11. In this case, condition (b) required, firstly, that details of improvement to the access on to the A386 be submitted to the NPA; secondly, that those details be approved by the NPA; and thirdly, that the improvement to the access be carried out in accordance with the approved details – all before the permitted development was “implemented”. In my judgement, the terms of the condition clearly seek to prohibit any development from taking place until its requirement to improve the access had been met.
 12. The reason for imposing condition (b), as stated on the Decision Notice, was “In the interests of public safety and convenience.” While there is evidence that the land was already in use as a caravan site, there is no information as to the adequacy, in terms of capacity and highway safety terms, of its access to the A386 as it existed at that time. Nor is there sufficient information to form any clear conclusion as to the extent or character of the “amendment of existing provision” allowed by the 1981 Permission.
 13. Nevertheless, the reference in the description of the development to “ten *new* pitches for touring caravans” [my italics] strongly suggests an increase in the pre-existing level of provision, for touring caravans at least. That would result in increased movements through the existing access. If a condition requiring improvement to the access was considered necessary to make the development acceptable (and it must have been, or it could not legitimately have been imposed) then it was appropriate to require that improvement to be completed before the development that rendered it necessary took place.
 14. My attention was drawn to various items of correspondence between the Highway Authority, the NPA, and the previous site owner and his agents. A note from the County Engineer dated 24 January 1986 observes that while the access had been improved since the refusal of an earlier application for planning permission in 1980, the visibility splays still fell below the appropriate design standards. A letter dated 13 March 1986 from the County Engineer to the previous owner’s agent discusses the works which could be carried out to achieve improvements to visibility in both directions, but I note that the reference quoted is that of a planning application made in 1985. It therefore seems likely that the context for these discussions was the determination of the 1985 application, rather than the discharge of condition (b) of the 1981 Permission.
 15. In any event, there is no evidence at all to indicate that details of improvements to the access were approved within the implementation period of the 1981 Permission (that is, by 13 July 1986), or that such approved improvements were subsequently carried out. I note that in a letter to the previous owner dated 17 February 1988, the NPA reminded him of his obligations in respect of the access improvements (flowing, in that context, from the condition attached to the 1987 Permission) and advised that the Committee was minded to take enforcement action if the improvements were not carried out.
 16. Taken together, I consider that such evidence as is currently available indicates that the safety of the access at the time of the 1981 Permission was an important consideration, such that improving it was fundamental to the

acceptability of the development then permitted. The evidence also indicates that the requirements of the condition were not met. In summary, I find that condition (b) was a pre-commencement condition that went to the heart of the 1981 Permission. To the extent that any development took place pursuant to the grant of that permission, it did so in contravention of this condition, and so constituted development without planning permission.

17. I therefore conclude that the 1981 Permission was not implemented.

The 1987 Permission

18. "The 1987 Permission",⁶ dated 10 August 1987, grants planning permission for *Proposed site enhancement scheme involving an amendment of existing provision at site to allow for 9 residential vans, 16 holiday chalets, 18 static vans & 30 touring units at Magpie Caravan Park, Bedford Bridge, Horrabridge*. It is subject to six conditions. Those of relevance to the current appeal are (e) and (f), which state:

(e) The chalets, static holiday caravans and pitches for touring units shall only be occupied between 15th March and 15th November in each year.

(f) No touring unit shall remain on the site for more than 3 weeks in each year.

19. There is no dispute that the 1987 Permission has been implemented.

The 1988 "Variation of Condition" letter

20. The DNPA's record of planning applications indicates that an application for "proposed variation of condition to allow occupation of chalets for 10 months in any year"⁷ was submitted, and that the DNPA's decision was to "approve conditionally". No copy of the application is available, but there is a copy of a letter dated 10 March 1988 from the DNPA ("the 1988 letter") to the then owner of the site and his agent, which states that the National Park Committee decided on 4 March 1988 to agree to the extension of the period of occupancy of the chalets from 8 months to 10 months, with the period when they were not occupied to be from 15 January to 15 March in each year. The letter goes on to state: *A separate decision notice will not be issued in respect of this application, but this letter should be attached to the approval notice dated 10 August 1987.*

21. In their oral evidence to the inquiry, both Mr Aven for the DNPA and Mr Eiser for the Appellant admitted, very fairly, that they were unable to say with any certainty at all what the status and effect of this 1988 letter actually is. Mr Aven acknowledged that it would not stand as a valid decision if issued today. Mr Eiser observed that it appears to provide tacit approval for the proposal, without being a formal determination of the application, and noted that it is consequently unclear where this leaves condition (e) of the 1987 Permission. He suggested a possible interpretation would be that condition (e) no longer exists, having never been formally replaced following approval of its variation.

22. The Closing Submissions made on behalf of the DNPA pointed out that the statutory regime governing planning applications and decisions at the date of the 1988 letter did not contain a provision equivalent to the current s.73 of the 1990 Act (that is, express power to apply for planning permission for the

⁶ Ref F/3.35/895/1986/5826/6

⁷ Ref 03/35/1722/87

development of land without complying with conditions attached to an earlier permission); neither did the 1988 letter comply with the requirements as to form and content prescribed by that regime. On that basis, the DNPA contends that the purported permission of the 1988 letter should be regarded as a nullity and of no effect; alternatively, if not a nullity, that it would operate to amend the period during which the chalets could be lawfully occupied, but would leave intact that part of the condition which governs the occupation of static holiday caravans and pitches for touring units.

23. In my judgment there is no sound basis, in the context of this appeal,⁸ on which to conclude that the 1988 Letter effected the variation or removal of condition (e) of the 1987 Permission. The letter itself does not purport to be a decision notice issued in determination of an application for planning permission; indeed, it specifically states that a decision notice will not be issued. It does not make any specific reference to condition (e), nor set out any "as varied" wording for that condition. It may have been the DNPA's intention that the function of the letter should be to amend the terms of condition (e), but even if it were, the DNPA's own evidence is that the letter did not accord with the relevant statutory requirements and so could not have performed that function.
24. Taking all of this into account, I conclude that on the basis of the evidence currently before me the 1988 Letter cannot be afforded the status of having varied, amended, or removed in whole or in part any of the conditions attached to the 1987 Permission. That being the case, the 1987 Permission should be interpreted as remaining subject to the terms of condition (e) as originally imposed.

The 1993 Permission

25. "The 1993 Permission",⁹ dated 29 October 1993, grants planning permission for *Extension of Magpie Leisure Park* subject to a number of conditions. However, since the area of land covered by this permission lies outside the area of land that is the subject of this appeal, it is common ground that the 1993 Permission has no relevance in this context.

The 2013 Permission

26. "The 2013 Permission",¹⁰ dated 29 July 2013, grants planning permission for *Variation of condition e of permission ref 03/35/0895/86 to allow longer time of holiday use from 8 months per year to 11 months, Magpie Leisure Park, Bedford Bridge, Horrabridge*. It covers three separate pockets of land within the current appeal site, and is subject to 4 conditions. Of relevance for this appeal is condition (2), which states that *Any caravan within the application site shall only be occupied during the period 1 March to 31 January each year*.
27. The application was made under s.73 of the 1990 Act, which confers power to amend or remove conditions attached to an earlier grant of planning permission, but not to amend any other part of the permission. Despite the somewhat confusing terminology it is important to be clear that the outcome of

⁸ I say "in the context of this appeal" because it seems to me that there could be an argument, in other contexts (such as a consideration of the expediency of enforcing the disputed condition), that it was reasonable for the owner (and subsequent owners) to act in reliance upon the content of the 1988 Letter. That argument however does not bear on my determination of the current appeal.

⁹ Ref 3/35/149/93/04

¹⁰ Ref 0294/13

a successful s.73 application is NOT to amend the terms of the existing earlier permission: that remains completely unaltered. Rather, the outcome of a successful application under s.73 is the grant of a wholly new planning permission which the applicant is entitled to implement or to ignore. No conclusive information was available as to whether or not the 2013 Permission was implemented or ignored, but since the Appellant's evidence is that it would need to be taken into account if assessing the materiality of any change from the existing lawful use to the proposed use,¹¹ I shall proceed on the basis that it has been implemented.

The Existing Lawful Use of the land

28. From the foregoing consideration of the status of the various grants of planning permission, I conclude that the use of the appeal site is governed by the 1987 Permission. This permits *9 residential vans, 16 holiday chalets, 18 static vans & 30 touring units*, and is subject to conditions, two of which are relevant for current purposes: (e) *The chalets, static holiday caravans and pitches for touring units shall only be occupied between 15th March and 15th November in each year* and (f) *No touring unit shall remain on the site for more than 3 weeks in each year*.
29. The operative effect of the 2013 Permission is that the use of the three pockets of land within the appeal site that are its subject is governed by the description of development used in the 1987 Permission but, as an alternative to complying with conditions (e) and (f) of that earlier Permission, may instead comply with the "varied" condition *Any caravan within the application site shall only be occupied during the period 1 March to 31 January each year*.
30. There are no conditions which restrict the number, or type of occupation, of the caravans permitted on the land. In order to weigh the implications of this, it is necessary to have regard to the relevant case law.
31. In *I'm Your Man Ltd* ¹², the High Court considered the terms of a grant of planning permission for "additional use of warehouse/factory for sales, exhibitions and leisure activities *for a temporary period of seven years* [my emphasis] at Weston Business Park", which was not subject to any condition requiring the cessation of the use after seven years. The Court held that the planning permission as granted permitted the change of use of the buildings, and (in the absence of a condition) did not impose any limit on the period for that use.
32. In the later case of *Cotswold Grange Country Park* ¹³, the High Court considered the terms of a grant of planning permission "to erect and re-site 40 caravans and provide 14 additional static caravans (within original area) and ancillary works (partially retrospective) all for year round holiday use", which was not subject to any condition restricting the number of caravans on the site. The Court noted that "...the determinative issue... is not whether the limitation is imposed merely in terms of a restricted description of the permission granted, but whether it is in the form of a condition. That is the *I'm Your Man* principle." It held that there is a difference between a limitation of numbers of caravans in the description in the grant of permission, and a limitation of such

¹¹ Per Mr Eiser in cross examination

¹² *I'm Your Man Ltd v Secretary of State for the Environment* (1999) 77 P&CR 251

¹³ *Cotswold Grange Country Park v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin)

- numbers in the form of a condition, and that only the latter was capable of imposing a limitation at law.
33. In *Altunkayak*¹⁴, the grant of planning permission at issue was for “conversion of shop to restaurant kitchen and hot food takeaway as an extension to the present premises at number 15.” It was not subject to any condition limiting the use of the premises to use as an extension to number 15. The Divisional Court held that “...the reasoning in *I’m Your Man Limited* contains nothing to justify confining its application to temporal limitations. The relevant principle, drawn from the wording of the statute, is a general one: if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition.”
34. In this current appeal, it is common ground that while the description of the development permitted by the 1987 Permission includes reference to specific numbers of caravans, this does not limit the use of the land to the numbers specified. It would have been open to the DNPA to impose such a condition on the 1987 Permission, but it did not do so. The DNPA accepts that an increase in the number of caravans would not be a breach of condition, because there is no condition limiting numbers.
35. Condition (e) clearly restricts the occupation of chalets, static holiday caravans and pitches for touring units to the 8 month period between 15th March and 15th November in any given year. Mr Eiser accepted in cross examination that taken together with condition (f) – which prevents any touring unit from remaining on the site for more than 3 weeks in any year – this would frustrate any attempt to occupy touring units for permanent residential, rather than holiday, use. I agree with that analysis. As to the reference to “static holiday caravans” in condition (e), Mr Aven accepted in cross examination that the occupancy restriction would be applicable to static caravans in use for holiday purposes, but not to those in use for residential purposes. Again, I agree with that analysis.
36. The Appellant submits that in the absence of any condition limiting the number of residential caravans that may be present on the site, and any condition limiting the use of the residential and static caravans occupied for non-holiday purposes, the 1987 Permission expressly provides for an unrestricted number of residential caravans for year-round occupation.
37. However, I am not persuaded that this approach is supported by the case law referenced above. In *Altunkaynak*, approving *I’m Your Man Ltd*, Richards LJ held that if a limitation is to be imposed on a permission it has to be done by condition, but he did not say that the description of development granted by the permission itself could somehow be ignored. In *Cotswold Grange Country Park*, Hickinbottom J remitted the case to the Inspector to decide whether the siting of six additional caravans for residential purposes would amount to a material change of use: he did not hold that the development permitted by the planning permission already granted permission for those additional caravans.
38. Helpfully, the Court of Appeal has shed further light on the matter in *Winchester City Council v SSCLG*.¹⁵ That case concerned a grant of planning

¹⁴ *R (on the application of Resul Altunkaynak) v Northampton Magistrates’ Court and Kettering Borough Council* [2012] EWHC 174 (Admin)

¹⁵ *Mr M Wall, Mr M Black, Mrs S Wall, Mr D Birch, Mr D Carter & Mr M James v Winchester City Council v Secretary of State for Communities and Local Government* [2015] EWCA Civ 563

permission for the “change of use of agricultural land to travelling showpeoples’ site”, which was not subject to any condition preventing occupation by persons other than travelling showpeople. The Council issued an Enforcement Notice alleging its occupation by people who were not travelling showpeople was a breach of planning control, which was quashed on appeal by an Inspector who concluded that, on the basis of the *I’m Your Man Ltd* principle, the planning permission was “not limited” as there was no condition attached to it that restricted occupancy.

39. The Council challenged that decision, and in its judgment allowing the Council’s appeals, the High Court held that the planning permission at issue was a limited grant of permission to use the land as a travelling showpeoples’ site, rather than an attempt (which would have been ineffective, because of the *I’m Your Man Ltd* principle) to impose a limitation or restriction on a more general grant. In determining the subsequent appeal against this judgment, the Court of Appeal considered the *I’m Your Man Ltd* line of authorities and found that it had been misunderstood by the Appellants, and misapplied by the Inspector.
40. Sullivan LJ said: *It is possible that the use of the word “limitation” in the judgments has contributed to the misunderstanding of the effect of the I’m Your Man line of authorities. The simple proposition which should not be lost sight of is that the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself. Whether other uses would or would not be materially different from the permitted use is irrelevant for the purpose of ascertaining what use is permitted by the planning permission. If the permitted use has been implemented, and a change to the permitted use takes place, then it will be a question of fact and degree whether that change is a material change of use.*
41. The Appellant also drew my attention to three previous appeal decisions, concerning caravan sites at Greenacres, Willingale¹⁶; Meadowview Park, Battle¹⁷; and Matchams Drive, Matchams¹⁸. In the Greenacres and Meadowview Park decisions, the Inspectors concluded respectively that a numerical limitation on the number of mobile homes permitted has to be achieved by a planning condition, and that in the absence of a condition restricting the particular type of caravan permitted on the land, the grant of planning permission for development described as “extension of caravan park to cater for an additional 10 touring caravans” did not limit the use of the land to touring caravans only.
42. In the Matchams Drive decision, the Inspector was considering a s.73 Permission granted in 2003 which, on his interpretation, superseded a Planning Permission granted in 1979: he nevertheless considered it appropriate to work from the wording of the 1979 Permission to construe the description of what was granted in 2003. He found that the 1979 Permission to “Use land as a Holiday Caravan and Camping Site for Naturists”, the words “holiday” and “naturists” had no functional significance and so were not “lawful limitations” that constrained the development permitted; they were permissive, rather than restrictive, of the lawful use of the site.

¹⁶ Appeal ref APP/J1535/C/14/2225843 & APP/J1535/A/14/2225844

¹⁷ Appeal ref APP/U1430/X/16/3164696

¹⁸ Appeal ref APP/U1240/X/16/3152283 & APP/U1240/X/17/3179428

43. I have no reason to disagree with any of those conclusions. But I do not consider that they support the Appellant's argument that because there are no conditions limiting the numbers or occupation of non-holiday caravans on this appeal site, it must follow that its use for any number of caravans for residential purposes would be lawful. That is a leap of logic which is not made in any of the three appeal decisions before me.
44. In the Greenacres decision, the Inspector concluded that in the absence of a condition expressly controlling the number of mobile homes that may be placed on the land, the stationing of an additional caravan on the land did not amount to a breach of planning control in the form of failure to comply with a condition. But she went on to note "The issue becomes whether there has been a material change in the definable character of the land."¹⁹ In the Meadowview Park decision, the Inspector's conclusion that the siting of static caravans for year-round residential use would be lawful was informed not only by the fact that there were no conditions limiting the use of the land to any particular type of caravan, or preventing the year-round use of the site, but also by her finding that a change in the use of the caravan park from the siting of touring caravans to the siting of static caravans would not constitute a material change of use.
45. The Inspector responsible for the Matchams Drive decision concluded, on the specific facts of that case, that the use of the land for permanent residential use of 45 caravans would be lawful because there was "no lawful limitation" and no condition, beyond a numerical restriction to 45 caravans. However, he went on to say that he was "aware that there is a contrary argument" and, citing relevant case law, concluded "In these circumstances, notwithstanding my earlier finding, I consider it to be prudent to assess materiality." He then went on to examine whether the proposed use would be materially different from that permitted.
46. Bringing all of this together, I am not persuaded by the Appellant's argument that in the absence of conditions limiting the number or type of occupation of caravans permitted on the appeal site, the existing grant of planning permission allows for any number of caravans for residential purposes. Keeping the proposition that *the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself* clearly in sight,²⁰ the development permitted by the 1987 Permission is: "Proposed site enhancement scheme involving an amendment of existing provision at site to allow for 9 residential vans, 16 holiday chalets, 18 static vans & 30 touring units at Magpie Caravan Park, Bedford Bridge, Horrabridge." That is the existing lawful use of the appeal site. This description does not, for the reasons discussed above, serve to limit the number or type of caravan that may be stationed on the site, but that does not mean it can simply be disregarded.
47. In my judgment, the words in the 1987 Permission permit a caravan site at which caravans provide both permanent residential accommodation and holiday accommodation, the year-round use of the latter being prevented by condition. The proposed use for "the stationing of up to eighty caravans for the purposes of human habitation" would be a change from this permitted use, in that it

¹⁹ Since the Enforcement Notice appealed against did not allege a material change of use, and could not be corrected without causing injustice, she very properly concluded that she should not consider the material change of use issue further in the context of that appeal.

²⁰ Para 40 supra

would encompass the use of any and all caravans on the site to provide permanent residential accommodation, with no holiday use at all.

48. The question then is whether, as a matter of fact and degree, this change would constitute a material change of use.

The proposed use in comparison with the existing use

49. In order to assess the materiality of any change of use, it is necessary to establish the appropriate planning unit. In this case, there is no dispute that the planning unit is the area of the site outlined in red on the plan which accompanied the LDC application. This broadly equates to the area that is the subject of the 1987 Permission, with the exclusion of the dwelling known as "The Barn" and its grounds. The area of land to the east, which was the subject of the 1993 Permission to extend the leisure park, does not form part of this planning unit.
50. As the Appellant rightly points out, the proposed use would not be of a different type to the existing lawful use, in that the planning unit would remain a caravan site. The intensification of an existing use can, but will not necessarily, amount to a material change of use: what is at issue is whether the extent and nature of the change amounts to a change in the *character* of the existing use. It is important to be clear that what is to be compared, in deciding whether there would be a material change of use, is the present use (rather than any notional use which may theoretically be possible without the need for a further grant of planning permission) and the proposed use.
51. The Appellant contends that a test of materiality is not necessary, and so has provided very limited evidence in respect of this matter. On the basis of the evidence that is currently before me, the present use involves the provision of nine caravans for unrestricted residential occupation, which are located at the western side of the site, and five holiday chalets, which have been constructed within a defined area on the opposite side of the site. There is a central, grassed area which I am told is where touring caravans are sited (understandably, given the time of year, none were present at my site visit) with the area to the rear of this, which backs on to woodland, used for the siting of static vans.
52. I note the Appellant's point that there is no condition which would prevent the permanent residential occupation of these static vans. But there is no evidence to suggest that they, or any other caravan on the site apart from the nine caravans provided for unrestricted residential occupation, are being or have been used for any purpose other than holiday accommodation, during the months of the year that are not restricted by condition.
53. There are, then, distinct elements which contribute to the existing character of the planning unit. The caravans in the western part of the site, which are in unrestricted residential occupation, have the air of permanent residences: there are well-kept and clearly delineated gardens with mature planting; private parking spaces; and domestic additions such as porches, fencing, decked areas and letterboxes. The chalets in the eastern part of the site are wooden buildings, set well apart, with pitched roofs and a distinctive "lodge" style; they can only be occupied between 15 March and 15 November each year, and so are unused in winter.

54. The central part of the site, in contrast to these two areas, has a more open and communal feel. It is predominantly grass, with some trees and areas of hardstanding, and no obvious permanent delineation of pitches. The remaining part of the planning unit consists of the two grassed areas of open space to either side of the entrance driveway, which lie between the A 386 and the row of mature trees along the southern side of the area used for the siting of caravans. The layout plan attached to the 1986 Permission appears to identify the grassed space on the eastern side of the driveway as an amenity area, and the NPA advises that it has also been used for grazing.
55. It is worth addressing here the NPA's contention about deviations from this layout plan. The 1987 Permission was granted for the development described in the application and attached plans. But while there is no dispute that the Permission was duly implemented, and it appears that the existing use of the site still accords in general terms with the details shown on the layout plan, there is no condition attached to the 1987 Permission requiring the approved layout to be retained. This means that any deviation from the layout plan does not necessarily constitute unauthorised development, and will not automatically result in a breach of planning control. The relevant question remains: whether or not the proposed development would constitute a material change of use.
56. In my judgment the western part of the planning unit, where the existing caravans in unrestricted residential occupation currently stand, would experience little change if the planning unit as a whole were to be used for the stationing of up to eighty caravans for that same purpose. The density of residential occupation may increase if additional caravans were placed within this area, but its domestic appearance and the year-round character of its use would remain largely unaltered.
57. The change would however be readily noticeable in the rest of the planning unit. The character and appearance of the central area currently varies with the seasons. In peak holiday season during the summer months, this part of the site is likely to be occupied by large numbers of holidaymakers in many different types of caravans and cars, with associated paraphernalia such as sun loungers, chairs, tables and parasols for sitting and dining out at; also barbecues, bicycles, ball games, and swimwear hung up to dry. The nature of this type of occupation gives rise to a great many comings and goings, with holidaymakers and their caravans arriving at and departing from the site, and also making day trips during their stay to visit local attractions and facilities.
58. In contrast to the high level of occupation and activity during the summer months, the major part of this area appears for the most part unoccupied and unused during the winter months, with the occupation of static holiday caravans and pitches for touring caravans prohibited by condition between mid-November and mid-March. Along the northern edge of this central area, and in two small pockets of land on its southern edge on either side of the entrance drive, the occupancy restriction imposed by the 1987 Permission has been varied by the 2013 Permission such that "any caravan" within these areas is only precluded from occupation during the month of February in each year.
59. Nevertheless, it seems to me that the character of the use of this central area would undergo considerable and significant change if up to 80 caravans were to be stationed on the planning unit for unrestricted occupation. A seasonal pattern of occupation, with peaks in the summer holidays and troughs in the

winter, would be replaced by unrestricted residential occupation that would generate a steady level of activity throughout the year. Areas of the site which are currently devoid of light and other human activity during the winter months would acquire a year-round domestic presence. The open, grassed area in the centre of the site would undergo a fundamental change, becoming similar in appearance to the western part of the planning unit, with substantial caravans set within private and well-delineated amenity space; permanent access roads and parking areas to serve each of them; ornamental planting; security lighting and other domestic paraphernalia.

60. A similar effect would occur in the eastern part of the planning unit, where the chalets are sited. It is common ground that the chalets are buildings, and that while their occupancy is limited by condition to eight months of the year, they are nevertheless dwellings. As such, they could not be demolished without first applying to the local planning authority for a determination as to whether its prior approval is required.²¹ While I do not share the DNPA's view that this is sufficient in itself to prevent the issue of the LDC in the terms requested, it does mean that the chalets – as with the trees within the planning unit that are covered by a Tree Preservation Order – present a physical impediment to whereabouts the proposed caravans could in fact be stationed. Put another way, the proposal for the stationing of up to 80 caravans on the planning unit could only be *in addition to* the existing chalets and the protected trees, not *in place of* them.
61. Any caravans placed in this part of the site for unrestricted residential occupation would, as within the central area, introduce lights, noise, and domestic activity where, during the winter months, there is currently none.
62. The pattern of movements to and from the planning unit would also be likely to change significantly. Of course, permanent residential occupiers may well undertake day trips to local attractions and facilities, especially during good weather. But there would no longer be large numbers of touring caravans arriving and leaving on changeover days. Instead, the majority of movements would occur during the morning and evening rush hours, when residents left to go to work or attend school. There would also be more visits by vehicles delivering post, groceries and mail order goods, and social calls from friends and relatives of the residents. There is no indication that this alteration in the pattern and likely volume of vehicle movements would present a problem in terms of highway safety, but the point is that it would be a marked change to the existing situation.
63. The most noticeable visual change would be the stationing of caravans on the open grassed areas at either side of the entrance. From the A386, public views of caravans are currently limited to glimpses through the boundary hedge and along the driveway, with the trees in the southern part of the site providing a considerable degree of screening. It is clear to passers by that the caravan site is there, but it is largely secluded from public view and well-integrated within the landscape. However, caravans in year-round residential occupation stationed within the grassed spaces adjoining the entrance would be clearly visible from the road, and would have the effect of visually extending the existing caravan site. Their presence would thoroughly domesticate the existing

²¹ Paragraph B.2 of Class B, Part 11, Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015*

areas of open grass, at the expense of the rural character of this part of the countryside.

64. As noted above, the planning unit currently under consideration broadly coincides with the area of land covered by the 1987 Permission: both include the open grassed spaces either side of the entrance, and the 1987 Permission has no condition requiring the layout detailed in the approved plan to be retained. But it is worth emphasising again that the comparison which needs to be made here is between the use proposed for the LDC, and the *actual existing use* of the planning unit. It is not, therefore, necessary or appropriate for me to attempt to establish the full extent of what could, in theory, be done within the terms of the existing grants of Planning Permission but (on the existing evidence) has not: for example, whether caravans could be sited on the open grassed spaces at the entrance, or whether any number of caravans could be brought on to the land and occupied as unrestricted residences.
65. Drawing all of this together, I conclude that the changes described above would bring about a substantial and fundamental change in the character of the appeal site's use. In my judgment there would be a material change of use.

Conclusion

66. For the reasons given above I find that the proposed stationing of up to eighty caravans for the purposes of human habitation is not provided for by the 1987 Permission. Rather, it would amount to a material change of the use of the land, for which planning permission would be required. On that basis, the requested Certificate that such a use would be lawful cannot be granted.
67. 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 up to eighty caravans for the purposes of human habitation 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.

Formal Decision

68. The appeal is dismissed.

Jessica Graham

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr M Rudd, of Counsel

Instructed by Mr B Eiser

He called:

Mr B Eiser BSc(Hons) MA PG Dip MRTPI

Director, Eiser Planning and
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FOR THE LOCAL PLANNING AUTHORITY

Mr T Leader, of Counsel

Instructed by Ms H Union, Solicitor to
Devon County Council

He called:

Mr J K Aven BSc MRTPI MRICS

Deputy Head of Development
Management, DNPA

INTERESTED PERSONS

Mr N V Morgan

Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Summary Proof of Evidence of Mr Aven
- 2 Copy of opening submissions made on behalf of the Appellant
- 3 Copy of opening submissions made on behalf of the DNPA
- 4 Copy of the notification letters dated 19 November 2019 sent by the DNPA to interested parties, notifying them of the details of the Inquiry
- 5 Copy of the press advertisement placed by the DNPA on 6 February 2020 providing details of the inquiry
- 6 Composite Plan, agreed by the parties, showing the extent of the land covered by each of the relevant planning permissions
- 7 Copy of the closing submissions made on behalf of the DNPA
- 8 Copy of the closing submissions made on behalf of the Appellant
- 9 Bundle of judgments provided by the Appellant: (1) *Cotswold Grange Country Park LLP v SoS CLG & Tewkesbury BC* [2014] EWHC 1138 (Admin); (2) *Winchester CC v SoS CLG, Mr Wall & ors* [2013] EWHC 101 (Admin); (3) *Breckland DC v SoS HCLG & Plum Tree Country Park Ltd* [2020] EWHC 292 (Admin).
- 10 Appellant's outline application for an award of costs

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- A Copy of email dated 8 March 2020 from Counsel for the NPA, confirming in writing the oral submissions made at the inquiry, viz that in the light of the evidence the NPA formally withdraws its objection to the grant of a LDC and invites the Inspector to allow appeal ref APP/J9497/X/18/3219534.