



Appeal Decision

by Jean Russell MA MRTPI

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

Decision date: 3 July 2020

Appeal Ref: APP/J3720/X/19/3223568

Welford Park, Barton Road, Stratford-on-Avon, CV37 8EY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against the decision of Stratford-on-Avon District Council to refuse to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Richard Mitchell on behalf of the occupants of 1, 2, 20, 21, 22, 24, 25, 26, 27, 29, 30, 31, 34, 35, 36, 37, 59, 62, 63, 64, 66 and 67 Welford Park.
 - The application for the grant of an LDC (ref: 18/01113/LDP) was dated 16 April 2018 and refused by notice dated 31 July 2018.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990, and the proposed use for which an LDC is sought is 'the stationing of caravans on the application site for residential occupation throughout the year'.
-

DECISION

1. The appeal is dismissed.

PROCEDURAL MATTERS

2. The Planning Inspectorate arranged for this appeal to be determined following a local inquiry that was scheduled for 7 April 2020. The event could not take place because of measures set out in the *Health Protection (Coronavirus, Restrictions) (England) Regulations 2020* and related guidance in response to Covid-19.
3. On 18 March 2020, I sent the parties a pre-inquiry note which suggested that the procedure could be changed, without causing either of them any prejudice, so that the appeal is determined on the basis of written representations and with no site visit. This would be possible because the appeal is concerned with planning law rather than merits, and the matters raised are such that I would not need to hear witnesses give evidence under oath.
4. I gave the parties an opportunity to make in writing submissions that I would have heard had the inquiry taken place. On that basis, the parties agreed that I could determine the appeal on the papers. I have had regard to all representations.
5. The Council made an application for an award of costs against the appellant, and that is the subject of a separate decision.

THE LDC APPLICATION AND APPEAL

6. As noted above, the application was made under s192(1)(a) of the Town and Country Planning Act 1990 (TCPA90) to seek an LDC for a proposed use of land. The question for me is whether the use '*would be lawful if instituted or begun at the time of the application*'; s192(2). The onus is on the appellants to make that case on the balance of probabilities, and the material date is 16 April 2018.
7. The appellants' case is that the proposed use would be lawful because conditions imposed on planning permissions for Welford Park do not prevent 'the stationing of

caravans...for residential occupation throughout the year'. Alternatively, it is said that commencing the use would not amount to the making of a material change of use for which planning permission is required. I consider these claims below.

8. The appellants also asserted in their appeal statement that *'...irrespective of any conditions that may have been imposed...there has in fact been a use for residential purposes for a period of more than 10 years and so immunity from enforcement action has accrued...this occupation is demonstrated by the statutory declarations that have been submitted and the Council's own records...'*
9. However, my remit for this appeal is to ascertain whether the proposed use *would* be lawful. The appellants did not apply for a determination under s191 as to whether an existing use has become lawful through the passage of the time. Their correspondence with and evidence submitted to the Council was relevant to s192 and so the Council determined the application (and contested the appeal) as made.
10. Accordingly, and so that there is no prejudice to any future proceedings, I will not speculate as to whether the proposed use is already taking place or could be immune from enforcement action, or what weight should be attached to the sworn declarations as evidence of existing use¹.

MAIN ISSUES

11. The main issues are whether planning permission had been granted by 16 April 2018 for 'the stationing of caravans...for residential use throughout the year' and whether instigating the use would have been lawful because it would not have constituted a material change of use in breach of planning control.

REASONS

Planning Permission

12. The appeal site has a long planning history, and so it is necessary to determine which planning permission governs the use of the land and whether the proposed use would be authorised by that permission, when its terms and conditions are interpreted properly, looking at the natural and ordinary meaning of the words used and the context in which they are used.
13. In cases such as this, the relevant permission is not always that most recently granted; there may be a question as to which permission was implemented and moreover was 'necessary'. It was held in *Newbury DC v SSE* [1980] JPL 325 that a planning permission would be incapable of implementation if it had not been required in the first place because the use rights granted in fact already existed.

Terminology in Planning Permissions

14. Before I turn to the planning history of Welford Park, it is worth explaining the meaning of key words and phrases. Any reference to a 'caravan' in a planning permission is to be taken as meaning a structure as defined in s29(1) of the Caravan Sites and Control of Development Act 1960 (CSCDA60) and s13 of the

¹ In my pre-inquiry note of 18 March 2020, I suggested that the appeal could (theoretically) be converted so that it is considered under s191 as relating to existing use, but it would be inappropriate to do so in this case. The Council responded that there is no statutory power to 'convert' an appeal – and it is true that, while s191(4) allows the decision maker to modify the description of development where an LDC is sought for an existing use or development, s192 includes no corresponding provision. However, it was held in *R v Thanet DC ex parte Tapp* [2001] EWCA Civ 559 that the description of development may be amended in s192 cases where the parties agree – following *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461, admittedly a s191 case, where it was held that there is a duty on the decision maker to issue a certificate where a lawful use is demonstrated. I am satisfied that an appeal may in principle be changed from s192 to s191 if that is where the evidence leads, and the parties agree – but those circumstances do not apply in this case.

Caravan Sites Act 1968. A caravan must be '*capable of being moved from one place to another*' and so the siting of a caravan does not normally represent a building operation. It is usually undertaken to facilitate a (change of) use of land.

15. Caravans must also by statute be '*designed or adapted for human habitation*' and indeed they are often stationed for residential use. They can be placed on land for different purposes², and so the approved use should be set out clearly in any grant of planning permission – but the term 'caravan site' should be construed as having the meaning given in s1(4) of the CSCDA60: '*land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed*'.
16. Planning permission is required for the making of a 'material change of use' but not for some change in occupation. Where permission is granted for a use of land and it is necessary for some planning reason to control how the use is exercised or who occupies the site, the restriction should be secured by imposing a condition on the permission. Conditions may be and often are imposed on planning permissions for caravan sites in order to restrict how many caravans can be placed on the land, who can occupy the caravan(s) and/or when the use or occupation can take place³.
17. S1(1) of the CSCDA60 prohibits the use of land as a caravan site unless the occupier holds a 'site licence'. While there are links between the two regulatory regimes, a site licence does not equate to a planning permission or vice versa.

1959-1978

18. The relevant planning history began with the grant of the '1959 permission' on appeal that year for a '*site for nine caravans*'. Whether or not that phrase had any meaning prior to the CSCDA60, conditions were imposed on the permission as set out in paragraph 7 of the appeal decision letter.
19. Condition (i) was that: '*the permission shall not authorise use of the land as site for caravans except during the period from 1 March to 31 October in each year and such use shall be discontinued at the expiration of ten years from the date of this permission*'⁴. Thus, the 1959 permission was temporary in duration and only allowed the occupation of caravans for eight months of the year.
20. The '1961 permission', granted on 20 September 1961, was for a '*proposed site for caravans*'⁵. The appellants provided a copy of this permission but referred to it in error as a site licence⁶. The appellants were correct in their observation that the decision notice did not refer to use for 'human habitation' but I would interpret the permission, postdating as it did the CSCDA60, as authorising precisely that use.
21. In any event, and although the 1961 permission did not limit occupation of the site to holiday-makers, it was again granted subject to a condition which stipulated seasonal occupancy and the discontinuance of the use after 10 years. Thus, the 1961 permission did not permit the proposed use for the [permanent] stationing of caravans for residential occupation throughout the year⁷.

² The most common uses of caravans, after residential use, are storage or purposes incidental to farming.

³ *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107; *Cotswold Grange Country Park LLP v SSCLG & Tewkesbury DC* [2014] EWHC 1138 (Admin)

⁴ Appeal ref: APP/2396/406210/115 – see Appendix 21 of Ms Weatherstone's proof of evidence.

⁵ Council ref: SD61/7/30 – see Appendix 20 of Ms Weatherstone's proof

⁶ Appendix WPI03 to Mrs Ruston's proof of evidence

⁷ The appellant also submitted (page 1 of Appendix WPI04) what looks like another 1961 planning permission (ref: SD60/12/1) said to relate to a caravan site called 'Welford Chase'. The Council did not refer to this permission, but it was in any case subject to a condition requiring seasonal occupation. It thus precluded the proposed use.

22. The appellants have also submitted what does appear to be the 1961 site licence⁸ and that was granted subject to a condition which limited use of the site to a 'holiday site', as well as occupation to between 1 March and 31 October. The 1961 licence is not conclusive of land use rights but insofar as it has any utility, it is consistent with the 1961 permission not allowing for the proposed use.
23. Further planning permissions were granted in 1973, 1976 and 1978 for the 'siting of caravans' or 'use as a caravan site'⁹. Again, the permissions must be interpreted as allowing the stationing of caravans for residential use, but each was granted subject to conditions which limited occupancy to certain months of the year and required the use to be discontinued on or before 30 July 1983. These and the previous temporary permissions have been superseded by the permanent permissions described below, and they have therefore expired.

The 1981 Permission

24. The '1981 permission' (ref: S80/1218 or 80/01218/FUL) was granted by the Council on 28 April 1981 for the '*permanent use of land for the stationing of seasonally occupied holiday caravans and 1 no. permanent caretaker's caravan*'. Again, therefore, the 1981 permission did not refer to use for 'human habitation' purposes but must be interpreted as in fact authorising that use.
25. The appellants initially described the 1981 permission as the 'root decision' and that was apt. I find that the 1981 permission was 'necessary' in *Newbury* terms because there were no existing rights to use Welford Park for residential purposes or as any kind of caravan site on a permanent basis.
26. No conditions were imposed on the 1981 permission to limit occupation to holiday makers, but condition 2 provided that '*the site shall not be used as a caravan site between 31st October in any one year and 1st March in the succeeding year*'. I find condition 2 clear and precise – and its effect would be to preclude the proposed use for the stationing of caravans for residential occupation throughout the year.
27. The appellants have not shown that condition 2 was invalid, or that Welford Park was not used after 28 April 1981 as a seasonal holiday caravan site. I find that the 1981 permission was implemented on the balance of probabilities.

The 1994 Permission

28. S73 of the TCPA90 allows development to be permitted without complying with conditions imposed on a previous permission. The '1994 permission' (S93/1366 or 93/01366/FUL) makes no express reference to s73, but what was approved in any event on 22 April 1994 was '*variation of planning condition to allow land to be used as [a] seasonal holiday caravan site for ten months in each year...*'
29. Thus, the use permitted in 1994 was as a 'caravan site' – and that was subject to two conditions that '*no caravan shall be used for human habitation for any purpose between the 1st day of January and the last day of February in any calendar year*' and '*the site shall be used solely for the purposes of holiday accommodation and for no other purpose whatsoever...*'
30. I find that the 1994 permission was 'necessary' to enable occupation over ten rather than eight months of the year or, in other words, to secure wider use rights than had been granted in 1981. However, conditions 1 and 2 imposed on the 1994

⁸ Page 2 at Appendix WPI04 to Mrs Ruston's proof

⁹ Council refs: SD73/7/8, S76/0403, and 77/01144/FUL and 77/01145/FUL – see Appendices 10-13 of Ms Weatherstone's proof. The 1976 permission related only to the use of land for a caretaker's caravan.

permission would again have the effect of precluding the proposed use for the stationing of caravans for residential occupation throughout the year.

The 2006 Permission

31. The '2006 permission' was granted on 13 February 2006 on an appeal (ref: APP/J3720/A/05/1191472) made pursuant to a s73 application (05/00519/VARY). The Inspector noted that while the application had been formally '*made to vary the 1981 permission, I understand the caravan park is now operating in accordance with the 1994 permission*'. While that observation did not represent a finding in law, it can be taken as evidence of the 1994 permission having been implemented.
32. Indeed, and with the parties' agreement, the Inspector considered the appeal as pertaining to the 1994 permission. He permitted '*the land to be used as a seasonal holiday caravan site...without compliance with Condition 1 previously imposed on planning permission Ref S93/1366 dated 22 April 1994 but subject to the following new condition and subject to the other condition imposed therein...*'
33. The conditions imposed by the Inspector on the 2006 permission reflected what had been asked for: condition 1 was that '*no caravan other than that occupied by the caretaker shall be used for human habitation between 6 January and 5 February (inclusive) in any one year*'; and condition 2 – as per condition 2 on the 1994 permission – restricted the use of the caravans to holiday accommodation.
34. The appellant suggests that the 2006 permission was not necessary because the site was, by that time, being occupied throughout the year. They have, however, submitted no evidence of the proposed use taking place in 2006, let alone being by then immune from enforcement action. Moreover, the only condition in dispute in 2006 was no. 1 on the 1994 permission. It seems that the 2006 appellant had no difficulty with using the site 'solely for the purposes of holiday accommodation'.
35. I find that the 1994 permission was probably implemented and so the 2006 permission was 'necessary' in order for the site to be occupied for 11 months of the year. It was needed to secure wider use rights than had been granted under the 1994 or 1981 permissions. That being the case, it must also be said that the conditions on the 2006 permission are crystal clear and did not authorise the stationing of caravans for residential occupation throughout the year.
36. The appellants also question whether the 2006 permission was implemented on the basis that the caravans have not *since* been used for holiday accommodation. But their own evidence is that no caravan was lived in before 6 February 2010¹⁰. They have not shown that the 2006 permission was not implemented during the intervening four year period. Furthermore, the appellants swore that they reside in their caravans 'for the period of eleven months of every year, from 6th February until 5th January' – in accordance with condition 1 on the 2006 permission.
37. I find it probable that the 2006 permission was necessary and implemented and thereby governs the use of the site, but it matters not if that conclusion is wrong, because the 1994 or 1981 permission would then be operative. The proposed use for the stationing of caravans for residential occupation throughout the year would be in breach of one or more extant conditions whichever permission applies.

Conclusion

38. The appellants have not shown that the 1981, 1994 or 2006 permissions were not implemented or necessary on the balance of probabilities. I find that the proposed

¹⁰ Mr and Mrs Mitchell's sworn declaration

use for the stationing of caravans for residential occupation throughout the year would be in breach of conditions 1 and 2 imposed on the 2006 permission. In the event of argument that the 2006 permission is not operative, the proposed use would be in breach of conditions 1 and 2 imposed on the 1994 permission, or in breach of condition 2 of the 'root' 1981 permission.

Material Change of Use

39. The appellants also contend that instigating the proposed use would not amount, as a matter of fact and degree, to a material change of use which requires planning permission. I shall not address the points raised in support of that claim because to do so would risk causing prejudice to any future proceedings. This appeal must be dismissed in consequence of my finding on the first main issue.
40. S191(2) provides that, for the purposes of the TCPA90, uses are lawful at any time if '*no enforcement action may then be taken in respect of them...*' An enforcement notice may be issued where it appears that there has been a breach of planning control, which can include a failure to comply with any condition subject to which planning permission has been granted; s172(1)(a) and s171A(1). If the proposed use had been begun on 16 April 2018, the Council could have enforced against a breach of a condition and, for that reason, I cannot issue an LDC under s192.
41. The appellants referred to other caravan site appeal decisions where the Inspectors considered whether undertaking something similar to the proposed use would constitute a material change¹¹. The Council has suggested that the other cases are not comparable to this, because they related to caravan sites where the original permission was not subject to any occupancy condition. The appellants have not shown that analysis to be wrong and I could not be bound by the other decisions anyway. I have properly considered this appeal on the factual evidence before me.

Other Matters and Conclusion

42. The appellants have provided evidence on the merits of the proposed use of the site for the stationing of caravans for residential occupation throughout the year. They state that the caravans are their 'main homes' for at least 11 months of the year, and they fear the effects of losing this appeal on their health and security. They also consider that the use would cause no harm in policy terms. They are supported by their ward councillor and GP, and they have written to a Minister.
43. I cannot address these issues because my remit is simply to ascertain whether the proposed use would have been lawful had it been begun on 16 April 2018. An LDC application is not made for the creation of rights but for a declaration as to what rights there are. Questions of merits, policy and human rights are not engaged and, likewise, I cannot comment on delays in the appeal or application processes.
44. I have found on the balance of probabilities that, if the proposed use had been instituted or begun on 16 April 2018, there would have been a failure to comply with one or more conditions subject to which a necessary and implemented planning permission had been granted. For that reason, and with regard to all other matters raised, I conclude that the Council's refusal to grant an LDC in respect of the proposed use was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the TCPA90.

Jean Russell

INSPECTOR

¹¹ Appeal refs: APP/B1225/X/15/3002181 and APP/J3720/X/15/3003762