



Appeal Decision

Site visit made on 13 October 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2020

Appeal Ref: APP/A1720/X/19/3229854

Ellerslie Touring Caravan Park, Down End Road, Fareham PO16 8TS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr R Barney of Mayfair Hampshire Ltd against the decision of Fareham Borough Council.
 - The application Ref P/19/0069/LP dated 25 January 2019, was refused by notice dated 21 March 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as: The use of land for the stationing of caravans for the purposes of human habitation would be lawful because it would not be in breach of a condition or represent a material change of use.
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Summary of Decision

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

Preliminary Matter

2. It is clarified in the submitted statement of case that the '*proposal subject to this appeal seeks to confirm the lawfulness of using the land for the stationing of caravans for the purposes of human habitation including as a sole or main residence*'. I shall therefore determine the appeal on this basis, as the Council has had the opportunity to respond, and consequently injustice to the parties would not arise.

Main Issue

3. The main issue is whether the Council's decision to refuse a certificate of lawfulness concerning the use of the land for the stationing of caravans for human habitation including as a sole or main residence (a caravan site), is well founded, having particular regard to the planning permissions at the site.

Reasons

4. In matters such as this the onus is on the appellant to demonstrate his case on the balance of probabilities.

Planning history

5. As means of background, planning permission¹ (the first permission) was granted in 1985 where the description of development reads: *Use of land for 15 seasonal touring caravan pitches and for the storage of 50 touring caravans.*
6. The first permission contains 9 planning conditions, of which conditions 3 and 4 are of particular relevance:

Condition 3 reads: *The 15 pitches hereby approved shall be reserved for touring caravans only and shall not be occupied by static caravans and shall only be used between April and October (inclusive) each year.*

Condition 4 reads: *None of the caravans stored on the site shall be occupied for any purpose at any time.*

7. In 2005 a variation of condition 3 of the first permission was granted planning permission² (the second permission) which resulted in a short extension of the permitted use of the 15 pitches:

The sole condition reads: *The 15 pitches hereby approved shall be reserved for touring caravan only and shall not be occupied by static caravans and shall only be used between Good Friday or April whichever is sooner and October (inclusive) each year.*

8. In 2013 a further variation was granted planning permission³ (the third permission) which resulted in 10 months usage of the 15 pitches. The third permission contains 4 planning conditions, of which I highlight condition 3 for reasons of consistency with those above:

Condition 3 reads: *The 15 pitches hereby approved shall be reserved for touring caravans only and shall not be occupied by static caravans and shall only be used between February and November (inclusive) each year.*

The planning permissions

9. It is necessary to understand the ambit of the permissions. The parties accept relevant case law in that a description of development does not act as limitation on an approved use; it would necessarily need to be imposed by planning conditions. However, the use for which planning permission is granted must first be ascertained by interpreting the words of the planning permission itself.
10. In doing so, the first planning permission demonstrates on the balance of probabilities that planning permission was granted for two separate uses. The first use being a caravan site and the second for the storage of caravans. These are materially different uses. The second and third permissions, whilst being for a variation, are stand-alone permissions that are said to have been implemented.
11. It therefore follows that there is a limitation imposed by planning conditions when it comes to the caravan site use. That limitation can namely be found in

¹ Council Ref FBC 4168/20

² Council Ref P/05/0128/VC

³ Council Ref P/13/0045/VC

condition 3 of the third permission and for which the appellant does not dispute its relevance or enforceability.

12. This is therefore to say the use as a caravan site is limited to 15 pitches for touring caravans between the months of February and November each year, inclusive. Moreover, planning conditions can restrict the use to a particular type of caravan, such as touring caravans, as is the case with the permission.
13. There is however no limitation in planning terms by the manner in which these touring caravans can be occupied during those months, and therefore they could be used as a sole or main residence during that period, albeit occupants would need to vacate during December and January each year.
14. Given I have found there are two separate uses, it does not matter whether the first 15 caravans stationed at the site relate to the caravan site use, storage use, or a combination of the two.
15. There are however no planning conditions limiting the number of caravans pertaining to the storage use, or indeed the type of caravan; only that they should not be occupied in order to comply with condition 4 of the first permission, which reaffirms the storage use.
16. Given the planning conditions of the first and third permissions do not require the otherwise approved layout details to be retained thereafter, the appellant has demonstrated on the balance of probabilities that there are no limitations governing the layout of the site. Accordingly, caravans could be stationed in different configurations.

Conclusion

17. The appellant has therefore demonstrated on the balance of probabilities that the use of the land for the stationing of caravans for the purposes of human habitation including as a sole or main residence would be lawful. However, if it was the intention of the appellant, having regard to the evidence and all relevant case law before me, he has not demonstrated on the balance of probabilities that an unfettered use, given the ambit of the first permission and condition 3 of the third permission, would be lawful. Consequently, there would be no material change of use involved, and as I do not have sufficient evidence to demonstrate on the balance of probabilities that an unfettered or wider use as a caravan site would be lawful, I need not consider the materiality implications of such a proposal further.

Overall Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use in respect of the use of the land for the stationing of caravans for the purposes of human habitation, including as a sole or main residence (a caravan site), was not well-founded and that the appeal should succeed, albeit in particularised terms in recognition of condition 3 of the third permission. I will therefore exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

19. The appeal is allowed and attached to this decision is a certificate of lawful use describing the proposed use which is considered to be lawful.

Paul T Hocking

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 25 January 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has demonstrated on the balance of probabilities that the use of the land for the stationing of caravans for the purposes of human habitation including as a sole or main residence (a caravan site) would be lawful, albeit within the terms particularised in the First Schedule below.

Signed

Paul T Hocking

Inspector

Date 2 November 2020

Reference: APP/A1720/X/19/3229854

First Schedule

Use of land for the stationing of caravans for the purposes of human habitation, including as a sole or main residence (a caravan site), in accordance with condition 3 of planning permission P/13/0045/VC: *The 15 pitches hereby approved shall be reserved for touring caravans only and shall not be occupied by static caravans and shall only be used between February and November (inclusive) each year.*

Second Schedule

Land at Ellerslie Touring Caravan Park, Down End Road, Fareham PO16 8TS

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in my decision dated: 2 November 2020

by Paul T Hocking BA MSc MRTPI

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Scale: DO NOT SCALE

