



Appeal Decision

Site visit made on 25 November 2020

by **B.S.Rogers BA(Hons) DipTP MRTPI**

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

Decision date: 11 December 2020

Appeal Ref: APP/B3030/X/20/3256689

Spalford Leisure Park, Eagle Road, Spalford, Newark, NG23 7HA

- 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 Spalford Leisure Park Limited against the decision of Newark & Sherwood District Council.
 - The application Ref: 20/00318/LDC, dated 20 February 2020, was refused by notice dated 15 May 2020.
 - 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 the use of the land:- a). for mobile homes and static caravans to be stationed on the application site; b). for the mobile homes and static caravans to be used for year round residential or holiday use; c). for the mobile homes and static caravans to be stationed on the application site in any layout (subject to compliance with site licence conditions); and d). for the mobile homes and static caravans to be sited in any number or mix.
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Decision

1. The appeal is dismissed.

Reasons

2. The appeal site lies in the countryside, near to the small village of Spalford. Planning permission was granted in 1993¹ for: "*Change of use of existing pond for recreational fishing and to excavation to form fish stocking pool. Use land for caravan standing and storage*". It was subject to eleven conditions. In 2019, the Council issued a LDC² confirming the lawful use of the land as "*Use of the land as a caravan park without compliance with Conditions 3 and 5 (of the above permission)*".
3. In short, the appellants consider that the siting of mobile homes and static caravans would not amount to a material change of use and that there are no enforceable conditions that would restrict the type of caravan permitted, would prevent year round residential or holiday use, or would limit the layout, number or mix of units.
4. The Council concedes that there is now no limit on the total number of caravans, either occupied touring caravans or stored caravans, permitted on the site, as far as is compatible with Site Licence restrictions. Caravans of either permitted type (touring or storage) may be placed anywhere within the

¹ LPA Ref: FUL/921043

² LPA Ref: 19/01029/LDC

red line of the application site; they are not confined to the areas identified on plan 001C, which accompanied the 1993 application and there is no requirement that occupied touring caravans and stored caravans be kept separate.

5. I turn first to the question of the occupied caravans. The relevant part of the 1993 permission was for a 'caravan standing' and the 2019 LDC confirmed the use as a 'caravan park'. The statutory definition of a caravan in the relevant Act³ includes touring caravans, static caravans and mobile homes. The caravan standing/caravan park would remain as such irrespective of the type of caravan sited thereon. I am mindful of the principle established in *I'm Your Man*⁴ that, if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by way of condition.
6. The question then arises as to whether the 1993 permission limits the type of caravan that may be sited on the land and the way in which it may be occupied. Four of the eleven conditions appear to me to be relevant to this case:

2. This approval relates to the application as revised by Amended Plan reference FUL/921043/B attached to and forming part of this planning permission.

3. The number of touring caravans on the site shall be restricted to a maximum of 15 and the number of caravans for storage shall be restricted to a maximum of 30. The touring caravans and caravans for storage shall only be located in the identified areas outlined blue on the approved plan, Drawing no.001C date stamped 21st December 1992. [NB: this is the same plan as FUL/921043/B, referred to in Condition 2]

4. The touring caravans using the site shall be for holiday occupancy only for a limited period and there shall be no permanent residential use. For the purposes of this condition a limited period shall not exceed six weeks unless otherwise agreed in writing with the Local Planning Authority.

5. The storage standings shall be used solely for the storage of caravans and any caravans stored in this area shall not be used for residential purposes.

7. It appears that the 1993 permission intended the (occupied) use to be restricted to the siting of touring caravans for holiday use. This much can be interpreted from the plan expressly incorporated into the permission by condition no.2, which shows a total capacity of 15 pitches set out within the blue line; their size and indicative layout means that these could realistically only be interpreted as touring pitches. The note on the plan pointing to this area reads "see condition no.3".
8. Whilst Condition 3 is no longer enforceable, following the issue of the 2019 LDC, on the basis that it has been breached for more than 10 years, I do not rule it out as an aid to interpreting the 1993 permission. The wording of Condition 3 limits the number of touring caravans but does not go on to preclude the siting of other types of caravan. To my mind, this indicates a degree of ambiguity.
9. The general rule is that a planning permission should stand by itself, and the meaning be clear within the four corners of the document. However, there is clearly an issue of interpretation in this case. The principles established in

³ S.29(1) Caravan Sites and Control of Development Act 1960 as amended by S.13 Caravan Sites Act 1968

⁴ *I'm Your Man Ltd v SSETR* [1999] 77 P&CR 251

*Trump*⁵ and *University of Leicester*⁶ indicate that, where there is an ambiguity in a permission, it is permissible to look at the extrinsic evidence, including but not limited to the application form and, indeed, including but not limited to documentary evidence.

10. The starting point must be the permission itself. The reason given for Condition 3 is "*In the interests of visual amenity and the proper planning of the area.*" and the reasons given for Conditions 4 & 5 are "*In the interests of the proper planning of the area.*"; these add little clarity to the analysis. The Council points to a covering letter which accompanied the 1993 application in which the applicant's agent indicated an intention to provide better standings for the caravans and, in addition, a storage area on site for when they were not in use. Such an arrangement could only realistically apply to touring caravans, although that would not appear to preclude the storage of other types of caravan.
11. In addition, in December 1992, the Council sent the applicant a letter concerning the additional need for a Site Licence and enclosed the applicable "Model Standards for a Touring Caravan Site". Also, in a letter dated 18 December 1992, the applicant's agent confirmed that the fish pools and associated caravan standings would be run on a seasonal basis. The report on the planning application indicated that the site already had a licence for touring caravans.
12. Whilst I accept that there is a certain tension with the principles established in *I'm Your Man*, it appears to me that, when the planning permission and associated material accompanying the application are read as a whole, the 1993 permission defines the type of caravan that may be occupied on the site as "touring caravans". It does not appear to limit the type of caravan that might be stored on the land, as Conditions 3 and 5 use the terms "touring caravans" to refer to those intended to be occupied but omit the word "touring" when referring to the caravans to be stored.
13. As to whether permanent residential use is permitted, Condition 4 remains in full force and contains the wording "*... and there shall be no permanent residential use.*". There is some ambiguity as to whether this restriction on permanent residential use applies only to touring caravans or to the site as a whole.
14. In the case of *Lambeth*⁷, it was held that "whatever the legal character of the document in question, the starting-point - and usually the end-point - is to find "the natural and ordinary meaning" of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense." In the recent case of *D.B.Symmetry*⁸ The court asked itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole.
15. In the present case, as shown in the documentation accompanying the application, referred to above, there was clearly no intention of permitting any permanent residential use at all on site. To my mind, Condition 4 would have been a nonsense if touring caravans were prevented from being occupied

⁵ *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 WLR 85

⁶ *University of Leicester v SSCLG and Oadby & Wigston B.C.* [2016] EWHC 476 (Admin)

⁷ *L B Lambeth v SSCLG* [2019] UKSC33

⁸ *D.B.Symmetry Ltd v Swindon BC* [2020] EWCA Civ 1331

permanently but other types of caravan were not. Indeed, the wording of Condition 5 is consistent with this interpretation in stating "... *any caravans stored in this area shall not be used for residential purposes.*" Therefore, I am in little doubt that Condition 4, when read in context, prevents the permanent residential use of the site.

16. When the planning permission and any relevant documentation is read as a whole, it is my view that the only caravans permitted to be occupied on the site are touring caravans. And they may only be occupied as provided for in Condition 4 i.e. for holiday occupancy only, for a limited period (as defined).
17. Were static caravans or mobile homes to be sited on the land, as opposed to touring caravans, it follows that this would not be in accordance with the planning permission. However, it would not be a breach of condition and therefore I shall go on to consider whether it would amount to a material change of use.
18. Both static caravans and mobile homes would meet the statutory definition of a caravan and therefore the use of the site would remain a caravan site. On the basis of the Council's concession in para.4 above, the whole of the site is able to be used for either the holiday occupation of touring caravans or for storing caravans. In para.10 above, I have found no restriction on the type of caravan that could be stored, so this could amount to a mix of touring and static caravans. The appeal site is well screened from public view. In this context, there would be little difference between the visual impact of static and of touring caravans on the character of the area. The larger size of the static caravans would be offset by the fact that fewer could be accommodated compared to tourers. The change of caravan type would be unlikely to give rise to significantly different patterns of traffic flow. Accordingly, in my view, the siting of static caravans and mobile homes *per se* would not amount to a material change of use if they were occupied for holiday purposes in accordance with the permission read as a whole.
19. However, in addition to my view that use for permanent residential purposes would amount to a breach of condition, I consider it would also amount to a material change of use from holiday use. My reasons for this are that permanent residential use would entail year-round occupation, with no seasonal element. Accordingly, traffic generation would be constant throughout the year; the remoteness of the site indicates that the residents would be car dependent. In addition, postal and other delivery services would be required that would not normally occur with holiday use and residents would be likely to receive visitors. Furthermore, permanent residents would add to the burden on local services, such as health, welfare and education. The character and impact of a permanent residential use would be materially different from that of a holiday use.
20. I have taken account of the 3 planning appeal decision letters to which reference was made – Blossoms Nursery⁹, Royal Vale¹⁰ and Meadowview Park¹¹. However, they turn on the specific facts of each case and either predate or don't appear to have taken account of *Trump* and subsequent cases referred to above, which have influenced my decision.

⁹ APP/E2205/C/08/2072958

¹⁰ APP/A0665/X/14/3001615

¹¹ APP/U1430/X/16/3164696

21. I have also taken account of the presence of 4 static caravans on site. One of these is claimed to have been used for permanent residential use for more than 10 years but the lawfulness of that particular use appears to be a matter for an application under S.191 of The Act.
22. In conclusion, I have found that 3 elements of the development for which the LDC is sought would be lawful, namely a). for mobile homes and static caravans to be stationed on the application site; c). for the mobile homes and static caravans to be stationed on the application site in any layout (subject to compliance with site licence conditions); and d). for the mobile homes and static caravans to be sited in any number or mix. However, I find that part b). for the mobile homes and static caravans to be used for year round residential or holiday use would not be lawful. In an application under S.192 there is no equivalent power to that set out under s191(4) for me to modify the terms of an LDC application. It is for the appellant to propose the use or operation that they wish to ascertain the lawfulness of and part b) is a fundamental part of the proposed development.
23. Accordingly, 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 applied for was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

B.S. Rogers

Inspector