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# Appeal Decision

**by Alexander Walker MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 January 2021**

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**Appeal Ref: APP/D1265/X/20/3256918**

**St Annes Cottage, Horton Road, Three Legged Cross BH21 6SD**

- 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 St Annes Court Dorset Ltd against the decision of Dorset Council.
  - The application Ref 3/20/0388/CLP, dated 28 February 2020, was refused by notice dated 15 July 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 land for the stationing of static caravans for the purposes of human habitation.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by St Annes Court Dorset Ltd against Dorset Council. This application is the subject of a separate Decision.

## Procedural Matter

3. As the appeal relates to the lawfulness of a proposed use, views were sought from the parties as to whether it would be necessary for me to visit the site. No objections to this course of action were received and I do not consider that injustice to the parties would arise from determining the appeal on the basis of the written evidence before me.
4. The application form refers to 'mobile homes.' However, during the Council's consideration of the application, the reference to 'mobile homes' in the description of the proposed development was substituted for 'static caravans.' I have determined the appeal on this basis.

## Main Issue

5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded.
6. Firstly, I shall identify the existing lawful use of the site by considering the existing planning permission, including any conditions attached to it, and the existing certificate of lawful development. I shall then consider whether the proposed use of the land for the stationing of static caravans for the purposes of human habitation would fall within the existing lawful use or be in breach of any

existing conditions. If it would not, I shall then consider whether the proposed use would be a material change of use from the existing lawful use. If a material change of use would occur, this would amount to development requiring planning permission. If it would not, the certificate could be granted.

## Reasons

### *Planning History*

7. The appeal site benefits from a planning permission (the Permission) granted in 1980<sup>1</sup> for a 'site for touring caravans', subject to 7 conditions. Condition 4 states:

*No camping units on the site shall be used as permanent residential units.  
Reason: To ensure that the site is used as a touring caravan/camping site.*

8. An LDC was granted in 2016<sup>2</sup> (the Certificate) on the following terms:

*1. The use of land as a touring caravan site between the months of the 1 April to the 30 September each calendar year of not more than 50 caravans at any one time;*

*2. The use of land for the siting of non-occupied touring caravans between the months of the 1 October to the 31 March each calendar year, of not more than 22 caravans at any one time;*

*3. The use for the siting and residential occupation of a mobile home for occupation associated with the day to day operation of the site as a touring caravan park.*

9. A further LDC<sup>3</sup> was sought for "Use of land for the stationing of caravans for human habitation (a caravan site)". This was refused and subsequently dismissed on appeal<sup>4</sup>.
10. The Certificate does not restrict the scope of the Permission, as confirmed by the Inspector in the previous appeal. Both the Certificate and the Permission are to be considered in determining whether the proposed use would be lawful.

### *Interpretation of the Permission*

11. The description of the development as set out in the Permission specifies 'touring caravans'. 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.
12. In *I'm Your Man Ltd v Secretary of State for the Environment* [1999] 77 P&CR 251, 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 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. This principle was endorsed in *R (oao) Altunkaynak*

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<sup>1</sup> Council Ref 3/80/1284

<sup>2</sup> Council Ref 3/15/1223/CLU

<sup>3</sup> Council Ref 3/18/2668/CLP

<sup>4</sup> Appeal Ref APP/U1240/X/18/3217904

*v Northamptonshire Magistrates Court & Kettering Borough Council [2012] EWHC 174 (Admin).*

13. In *Winchester CC v SSCLG [2013] EWHC 101 (Admin)* it was held that planning permission for the use of land as a 'travelling showpeople's site' was a limited grant of planning permission for that use. Although there were no conditions limiting the occupation of the site to travelling showpeople, it could not be interpreted as planning permission for a residential caravan site and no conditions were necessary for the local planning authority to enforce against use by people who were not travelling showpeople.
14. In the case of *Cotswold Grange Country Park v Secretary of State for Communities and Local Government [2014] EWHC 1138 (Admin)*, 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 numbers in the form of a condition, and that only the latter was capable of imposing a limitation at law.
15. The circumstances in the case before me are slightly different to the *Cotswold* case in that the Permission refers to a specific type of caravan rather than numbers. However, in *Wood v SSCLG & the Broads Authority [2015] EWHC 2368 (Admin)* the Court held the principle that "if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition" extends beyond limitations of a "temporal" nature; it applies to "substantive" limitations as well.
16. In *Lambeth LBC v SSCLG & Aberdeen Asset Management, Nottinghamshire CC & HHGL Ltd [2019] UKSC 33* the Supreme Court considered whether a condition restricting the use of the premises should be implied into a planning permission granted under s73 by the local planning authority or, alternatively, whether the planning permission should be interpreted as containing such a condition. Summarising existing caselaw and interpretation, Lord Carnwath 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' and "The obvious, and...only natural, interpretation...is that the Council was approving what was applied for."
17. The appellant has also referred me to *Breckland District Council v Secretary Of State for Housing, Communities and Local Government and Plum Tree Country Park Ltd [2020] EWHC 292 (Admin)*. However, that case involved a site that benefitted from a CLD for "use of land as a caravan and camping site including associated amenity area", which did not, as a matter of fact, specify any restrictions on the type of caravans that could be lawfully sited on the land. In the appeal before me, the description of the Permission does in that it states "site for *touring* caravans" [my emphasis].

18. Having regard to the above case law, it is necessary to consider what the Permission permits. Following the approach set out in *Lambeth*, the starting point is to find "the natural and ordinary meaning" of the words used in the Permission. The description of the development set out in the decision notice for the Permission is "site for touring caravans". Furthermore, the conditions attached to the Permission frequently refer to touring caravans. Whilst there is no limitation in the description of the development as to how the caravans are to be used, planning permission was granted as a site for touring caravans only. Nevertheless, the conditions limit the use of the site as a touring caravan/camping site between 1 April and 30 September and that no unit shall remain on the site for more than 14 consecutive nights.
19. Given the above, the natural and ordinary meaning of the wording of the Permission, read in conjunction with the conditions attached to it, can only reasonably mean that planning permission was granted for a caravan site for touring caravans for holiday use and that the Council was approving what had been applied for.
20. The appellant argues that the previous Inspector did not accept the Council's proposition that the descriptive term of "touring caravans" is enforceable. The Inspector commented that: "It was asserted by the Council that the permission had a narrow description which related to touring caravans only. The inference being that a different type of caravan would be outside the scope of the permission and thus be a breach of planning control. The Council however could not provide any authorities to support this strict interpretation". However, he did not go as far as to say that there was no merit in the argument; only that the Council had not provided any authority to support it. In the appeal before me, I have been presented with various caselaw on the matter.
21. Consequently, the siting of static caravans for human habitation would fall outside the definitional scope of what was granted planning permission.
22. Turning to the conditions attached to the Permission, condition 4 of the Permission refers to "*camping units*". The Inspector in the previous appeal<sup>5</sup> found that this included touring caravans as it would be an absurdity to interpret it as only preventing the use of tents as permanent residential units. He also found that as this condition relates to touring caravans, as opposed to any type of caravan, the unfettered human habitation of mobile homes would not be in breach of it. Looking at the natural and ordinary meaning of the wording of this condition, I concur with this conclusion. The appellant contends that the Inspector's interpretation of the condition amounts to its alteration. However, no argument is advanced justifying this, although they concede that this point does not affect their intentions for the site.
23. The terms of the Certificate also only refer to touring caravans, with the exception of (3), which is for the siting of a mobile home for residential occupation. However, this is clearly a single mobile home and is to be occupied in association with the day to day operation of the touring caravan park. I note that this term refers to the site as a "touring caravan park".
24. Given the above, the proposed stationing of static caravans for the purposes of human habitation would not be in breach of a condition attached to the Permission or any limitations of the Certificate.

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<sup>5</sup> Appeal Ref APP/U1240/X/18/3217904

25. In my judgment, the Permission and the Certificate permit the use of the appeal site for touring caravans for holiday use between 1 April to 30 September. That is the existing lawful use of the appeal site. I have established that the proposed development would fall outside the scope of the Permission but would not be in breach of any conditions attached to it or the terms of the Certificate.

*Whether there would be a material change of use*

26. My attention turns to consider whether the use of the site for the stationing of static caravans for the purposes of human habitation would amount to a material change of use. If it would not, there would not be a breach of planning control. In assessing whether there would be a material change of use comparisons should be drawn between the existing lawful use and the proposed development.
27. Following the granting of the Certificate, conditions 2 and 3 attached to the Permission are no longer enforceable. The terms of the Certificate restrict the number of caravans to no more than 50 at any one time. Therefore, the number of static caravans would be no greater than the number of touring caravans permissible on the site. Although static caravans are typically larger than touring caravans, touring caravans frequently have awnings attached to them, which can almost double their size. In addition, touring caravans often have domestic paraphernalia such as outdoor seating, a washing line, outdoor cooking facilities, similar to what may be found accompanying a static caravan used for permanent residential use. In terms of their positioning, there is nothing to satisfy me that the static caravans would not be arranged in a similar pattern as the existing touring caravans are.
28. In terms of traffic generation, there would likely be an increase in the number of traffic movements as static caravan residents may travel to and from work; deliveries of groceries and parcels would be made more frequently; and, there would be more general comings and goings as a result of visitors, school runs, general shopping etc. However, I do not consider that such movements would increase to such an extent that it would, in isolation, result in a material change in the use of the site.
29. The Council also argue that there would be an intensified impact on the Dorset Heaths Special Area of Conservation and Dorset Heathlands Special Protection Area as a result of the likely increase in cat ownership due to the proposed use. However, my consideration of whether there would be a material change in the use of the site does not take into account the planning merits of the proposal. I accept that there will likely be some degree of cat ownership amongst the residents of the site, which would likely have a negative impact on protected species and the Dorset Heaths Special Area of Conservation and Dorset Heathlands Special Protection. However, my consideration is on the basis of whether there would be any material change in the use of the site, not whether there would be any harm. I do not consider that the increase in the number of cats within the locality would amount to a material change in the use of the site.
30. Notwithstanding the above, the Certificate restricts the use of the site as a touring caravan site to between the 1 April and 30 September. Whilst non-occupied caravans can be sited on the land between 1 October and 31 March, this is limited to only 22 caravans at a time. *Moore v SSCLG & Suffolk Coastal DC [2012] EWCA Civ 2101* held that it was not correct to say that using a dwelling for commercial holiday lettings would never amount to a material

change of use or that it would always amount to a material change of use. Rather, in each case it would be a matter of fact and degree and would depend on the characteristics of the use as holiday accommodation. Applying this to the case before me, whether there would be a material change of use from touring caravans for holiday purposes to static caravans for permanent residential purposes between 1 October and 31 March is a question of fact and degree and the particular characteristics of the use.

31. During this period of non-occupation, between 1 October and 31 March, the nature of the site no doubt changes significantly as there would be far fewer traffic movements in and around the site and far fewer people going about their daily activities, indeed this would likely be limited to staff and possibly the occasional visit from caravan owners to check on their caravans. Furthermore, there would be a reduction in the number of touring caravans on the site, awnings would likely be taken down and general domestic paraphernalia stored away. Therefore, the overall effect on the visual amenities of the site and the surrounding area would be significantly reduced compared to the other times of the year.
32. The proposed use would result in the typical activities and comings/goings of site residents that I have identified above continuing throughout the year. For example, residents traveling to and from work, carrying out school drops offs/pickups as well as parcel and grocery deliveries being made. In addition, general residential activities would continue to take place on the site, such as the domestication of the caravans and their plots, including the placement of outdoor furniture, planting, erection of boundaries, storage sheds and washing lines. Furthermore, there would be lights (internal and external) and noise generated by site residents and the movement of vehicles. This would all be in marked contrast to the existing character of the site between the period of 1 October and 31 March, which is largely devoid of such activity during these months.
33. Overall, this would result in the character of the site fundamentally changing from that of a typical seasonal, tourist accommodation site to a year-round, permanent residential site. Therefore, whilst there would not be a material change in the use of the site when compared to the existing use taking place between 1 April and 30 September, as a matter of fact and degree, there would be when compared with the use of the site between the period of 1 October and 31 March.
34. The appellant has referred me to a number of appeal decisions for sites elsewhere where the Inspector allowed the appeal and granted an LDC. I acknowledge that there are similarities between the appeal before me and these appeals. However, the cases of Meadowview Park<sup>6</sup>, Matchams Drive<sup>7</sup>, Greenacres<sup>8</sup> and Castle View<sup>9</sup> predate *Lambeth*. Therefore, these appeals were determined against a different caselaw backdrop to the appeal before me.
35. In the case of Meadowview Park, the Inspector was not persuaded that a change in the use of a caravan park from the siting of touring caravans to the siting of static caravans would constitute a material change of use. However,

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<sup>6</sup> Appeal Ref APP/U1430/X/16/3164696

<sup>7</sup> Appeal Refs APP/U1240/X/16/3152283 and APP/U1240/X/17/3179428

<sup>8</sup> Appeal Refs APP/J1535/C/14/2225843 and APP/J1535/A/14/2225844

<sup>9</sup> Appeal Ref APP/C1435/X/17/3190604

there were no seasonal conditions on the relevant planning permission unlike the case before me, which I find to be a determinative factor on which my decision turns.

36. The Inspector in the Matcham's Drive appeal considered that the term "Holiday" in the planning permission was permissive rather than restrictive. However, following the judgment of *Lambeth*, in the case before me the consideration of the wording of the Permission does not necessarily mean that other caravan types are permitted, or indeed restricted. The *Lambeth* case involved both non-food and food use which fell within the same use class and therefore there was no material change of use. However, in the case before me, the assessment of whether there would be a material change of use is necessary.
37. In the Greenacres appeal, the Inspector was considering a breach of condition notice and therefore it was not open to her to consider whether there would be a material change of use. That is not the case in the appeal before me.
38. The Castle View appeal was for an LDC in relation to the all year round use of a caravan site in breach of a condition. The Inspector found that the condition was badly worded and as the all year-round use would not be in breach of this condition there would not be a material change of use. However, there was no limitation on the type of caravan that was permitted. In the case before me, there would be a different type of caravan to the existing and an all year-round residential use. Therefore, I do not draw any similarities with the Castle View decision that weigh in the proposal's favour.
39. I have also been referred to the Ruda Holiday Park<sup>10</sup> appeal, which concerned the use of a parcel of land that fell within the red lined area of a planning permission for caravans for short term holiday let as per the planning permission. The Ruda case did not relate to any change in the period of use. It is these changes that I have found to be determining factors in the consideration of whether there is a material change of use. Whilst he does not explicitly say there was no material change of use, in paragraph 13 of his decision, the Inspector states "Moving their location within land covered by a planning permission for such a use as holiday accommodation or swapping one caravan for another, provided they still meet the definition of being a caravan and they are to be used for the same purpose, would not be development requiring planning permission each time this happened."
40. In the case before me, the static caravans would be used differently to how the existing touring caravans are used. Furthermore, they would be in use all year-round, as opposed to the six month period the existing caravans are currently occupied for. Therefore, the resultant material change of use I have found would be development requiring planning permission.
41. Finally, in the Romansleigh<sup>11</sup> appeal referred to me by the appellant, the site benefitted from planning permission for "Use of land as site for 45 caravans and construction of toilet block and septic tank". There was no specific reference to touring or static caravans and there was no restriction on year-round use, unlike the appeal before me.
42. The appellant contends that it is not necessary to consider whether there would be a material change of use as the proposal falls squarely within what is

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<sup>10</sup> Appeal Ref APP/X1118/X/18/3217206

<sup>11</sup> Appeal Ref APP/X1118/X/20/3249504

permitted by the planning permission. Accordingly, the appellant has provided little evidence regarding the effects of the proposed development in comparison to the existing. Based on the evidence before me, I am not satisfied that there would not be a material change of use that would require planning permission.

### **Other Matters**

43. The appellant refers to an extract from the Inspector Training Manual. However, this is a constantly evolving document and is merely to be used as a training aid.

### **Conclusion**

44. I have found that the proposed siting of caravans for all year-round occupation for the purposes of human habitation does not fall within the scope of the Permission or the Certificate. It would amount to a material change in the use of the land that would require planning permission.
45. 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 siting of caravans for all year-round occupation 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.

*Alexander Walker*

INSPECTOR