



Appeal Decision

Hearing Held on 27 October 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 15 January 2021

Appeal Ref: APP/K2610/X/18/3218040

Merryhill Country Park, Telegraph Hill, Honingham NR9 5AT

- 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 by Mr R Bull - Norfolk Caravan Park Ltd - against the decision of Broadland District Council.
 - The application ref. 20180873, dated 23 May 2018, was refused by notice dated 22 November 2018.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - A certificate of lawful use or development is sought for the use of the land for the purposes of human habitation, including as a person's sole or main place of residence.
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Decision

1. The appeal is dismissed.

Procedure

2. Because of restrictions relating to the Covid-19 pandemic, I conducted a virtual hearing, using Microsoft Teams, having first held a test event on 26 October 2020.

Preliminary matters

3. For the avoidance of doubt, I should explain that in the context of an appeal under section 195 of the Act, which relates to an application for a lawful development certificate, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider. My decision will rest on the facts of the case, and on relevant planning law and judicial authority.

Background

4. Merryhill Country Park is a piece of land of about 5.5 hectares, lying on the north-eastern side of Telegraph Hill at its junction with Honingham Lane, and some 15 kilometres to the west of Norwich. I understand there are 94 pitches on the site occupied by static caravans or mobile homes of various styles and sizes. There is a long planning history to the site, and since 1989 there have been several grants of planning permission for siting of holiday homes/caravans on various parts of the land constituting the present site.

5. Two permissions are of principal relevance to this case. In 2004 planning permission reference 20040023 was granted for use of the land for a holiday caravan park¹. This encompassed all the areas for which planning permission had previously been granted and effectively consolidated the earlier permissions. In 2016 application reference 20160288 under s.73 of the Act granted permission for use of the land as a holiday caravan park, without complying with Condition 4 (Holiday Occupancy) of the 2004 planning permission², and imposing a new condition.

6. The 2004 planning permission was subject to a number of conditions, of which Conditions 4 and 5 are of relevance to this appeal. Condition 4 states that: *'The holiday accommodation shall not be occupied by any person for a period exceeding four consecutive weeks and such person shall not return within two weeks of such period'.*

The reason given for imposition of this condition was:

'The site of this proposal lies outside an area in which the Local Planning authority normally permits residential accommodation.'

7. Condition 5 states that:

'No static holiday accommodation shall be located within the following areas as shown on the amended plan dated 1 March 2004:

- i. The landscaping belt (edged and hatched green),*
- ii. The two amenity areas (edged yellow),*
- iii. The existing touring caravan area (edged pink); and,*
- iv. The two house and garden areas and the covered swimming pool (edged blue).'*

The reason given for imposition of this condition was:

'To ensure the satisfactory development of the site in accordance with Policy GS3 of the Broadland District Local Plan and (RD) GS4 of the proposed Broadland District Local Plan Replacement Version as agreed by the Council for publication of the Revised Deposit'.

The approved 2004 plan clearly shows these areas.

8. The 2016 permission was subject to a single condition in three parts, which state:

- (1) The caravans are occupied for holiday purposes only.*
- (2) The caravans shall not be occupied as a person's sole or main place of residence.*
- (3) The owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans and of their main home address, confirmed by two proofs of residence, and shall make this information available at all reasonable times to the Local Planning Authority.*

The reason given for imposition of this condition was:

¹ Decision notice ref. 20040023, dated 3 March 2004.

² Decision notice ref. 20160288, dated 13 April 2016.

'To prevent the occupation of seasonal holiday accommodation on a permanent basis in accordance with the requirements of Policy E3 of the Development Management DPD 2015'.

9. I note also that in 2015 a Lawful Development Certificate of existing use was granted for the continued residential occupancy in breach of occupancy restriction for 'Daffodil Cottage', 94 Merryhill Park³. Daffodil Cottage is a twin-unit static mobile home identified on the site location plan submitted with the application. It is near the western corner of the site.

Reasons

10. The main issue in a s.195 LDC appeal is whether the Council's decision was well-founded. In that regard the principal question in this case is whether on the 23rd May 2018 the proposed use of the site would have been lawful in the light of planning permission refs. 20040023 (the 2004 permission), and 20160288 (the 2016 permission) and the conditions attached to those permissions.
11. In a s.195 appeal against the refusal to grant a LDC the burden of proof is on the appellant to show that on the balance of probabilities the proposed use would be lawful. It is then for the Council to show this would not be the case.
12. The appellant argues that there is no enforceable condition that prevents occupation of the caravans on the site as a person's sole or main place of residence. Further, an application made and approved under s.73 of the Act does not take away or replace the earlier planning permission but results in a new permission that may or may not be implemented. The judgement in the High Court case *I'm Your Man*⁴ establishes that any restriction on use following implementation of a planning permission must be imposed by way of conditions, and a condition cannot be implied.
13. Regarding Condition 4 on the 2004 planning permission the appellant accepts as uncontroversial this is intended to control occupation of the caravans by precluding periods of occupation and return. However, he goes on to say that the permission does not prevent other caravans of a different type from being stationed on the site, nor is use of a caravan as a person's sole or main place of residence precluded.
14. In my view the approach to be employed is to consider what use or uses have been granted by the permissions, and whether the proposed use would fall within the permitted use or uses. The use permitted in 2004 was as a holiday caravan park. 'Holiday' is defined on the Shorter Oxford Dictionary as 'cessation from work', or as 'recreation'. Taking this as the ordinary meaning, it follows that the caravans are sited for a distinctly different purpose from that of everyday or permanent residential occupation. I do not consider the permitted use can be widened out to include this proposed use.
15. Condition 4 imposed on the 2004 permission then restricts occupation of the holiday accommodation to periods of four weeks after which the occupants may not return for a period of two weeks. I take use as a sole or main place of residence to mean that occupants could live in the accommodation

³ Decision notice ref. 20151326, dated 26 October 2015.

⁴ *I'm Your Man Ltd v Secretary of State for the Environment* [1999] 77 P&CR 251.

permanently or for such periods as they freely chose. I accept that the description of the development in the 2004 permission as 'use of the land as a holiday caravan park' does not explicitly exclude other caravans of a different type, provided no material change of use were entailed, and may be regarded as permissive. However, Condition 4 imposes a clear restriction on all the caravans – as holiday accommodation – and requires a somewhat regimented and intermittent pattern of occupation. In my view this is an explicit condition that restricts the extent of the permitted use, such that it removes the freedom to occupy the caravans permanently or at will. There may be other uses, not specifically for holiday purposes, that could coincide with such an intermittent pattern. While I have difficulty in imagining what they might be, they cannot be seen as providing a sole or main place of residence as it is reasonably understood.

16. The proposed use cannot on the balance of probabilities be regarded as use for the siting of holiday caravans and does not fall within the use permitted by the 2004 permission. Further, I consider as a matter of fact and degree the proposed use should be seen as a material change in that the effect would be to introduce permanent residential accommodation into an area where it would not normally be permitted. This might be for reasons such as lack of services and employment opportunities and effects on countryside interests.
17. The 2016 permission was for the same development – that is, use of the land as a holiday caravan park, but without complying with Condition 4 of the 2004 permission. It is apparent from correspondence that the s.73 application was submitted in order to introduce a less restrictive condition than that imposed in 2004, in that it would no longer prevent an owner or other occupant from occupation on two consecutive weekends.
18. Part 1 of the condition on the 2016 permission imposes the clear restriction that the caravans on the site are to be occupied for holiday purposes only. As I have found above, use of the words 'holiday purposes' indicates a distinctly different type of use from 'residential purposes'. Furthermore part 2 says that none of the caravans shall be occupied as a person's sole or main place of residence. Part 3 then requires that the owners/operators shall maintain an up-to-date register of the names of all owners/occupiers of individual caravans and of their main home address confirmed by two proofs of residence. This latter part effectively prevents owners/occupiers from establishing permanent residential status for individual caravans by means of LDC applications.
19. As the appellant says, the new permission does not take away or replace the earlier permission, and there is no requirement to commence the new permission. However, the Supreme Court judgement in *Lambeth*⁵ endorses the view taken in *Pye*⁶ that where a permission is granted under s.73 it is open for a developer to choose whether to implement the new permission or the one originally granted. In this case the appellant could choose whether to operate the site in accordance with conditions on the 2004 planning permission or the condition on the 2016 planning permission. However, it is not open to him to pick and choose one permission or the other.
20. It is apparent that the site owner has complied with the 2016 condition in that the required register of site occupants has been maintained. Indeed I would

⁵ *Lambeth London Borough Council v SSHCLG & Others* [2019] UKSC 33.

⁶ *Pye v SSETR* [1999] PLCR 28.

find it surprising if this had not been the case, since the newer condition is significantly less onerous than that on the 2004 permission, and the then owner had made his application on that basis. However, in either case I consider use of the caravans as sole or main places of residence would be in breach of condition.

21. It is argued that by virtue of the LDC granted in 2015 for continued residential occupation of Daffodil Cottage in breach of condition, the entire appeal site should be seen as a single planning unit in that use. The Council argue that the High Court judgement in *St Anselm*⁷ indicates this is not the case, but that each caravan pitch should be considered separately. The question then arises of whether it would be open to the Council to take enforcement action against individual caravan owners for breach of condition.
22. *St Anselm* concerned a development of flats with associated parking bays conditioned for use by the flat occupants. A number had been used in breach of the condition, and the use had become lawful over time. The appellant argued that all the parking bays had therefore become immune from enforcement action. The judge came to the conclusion that an enforcement notice should make plain that the breach of condition is by reason of use of a particular space, identify that space with sufficient clarity, and require no more than that the use of that space in breach of condition shall cease. He acknowledged that this construction resulted from a desire to avoid the unfortunate consequences that might flow across a range of cases should the appellant's approach be adopted.
23. The appellants in this case argue that *St Anselm* concerned parking bays allocated to separate planning units - that is, each flat - and is not relevant here. However, that was not a matter considered in *St Anselm*. One of the unfortunate consequences referred to by the judge and raised by the defendant, was the situation that would arise if there were breaches of the model condition to control the seasonal occupation of caravans on caravan sites⁸. This possible consequence is applicable here, and overall I consider *St Anselm* to be of relevance.
24. It is clear that the site of Daffodil Cottage has been clearly defined on the plan attached to the 2015 LDC. The plans submitted with the 2004 and 2016 applications show a clear layout of caravans. Although the appellant says that caravan owners may move around to different locations on the site, no evidence has been adduced to show this has occurred.
25. I note that the council have prepared a schedule of pitches for which lawful residential use has been demonstrated, those for which it has not been demonstrated, those compliant with the condition, and those awaiting confirmation of compliance. An enforcement case reference is given for each unit. The schedule lists only about 35 such units. However this provides a strong indication that the Council are able to institute enforcement action against the use of single pitches.
26. I can see no reason why enforcement notices should not be issued with respect to individual pitches, defining the alleged breach in each case, and requiring

⁷ *St Anselm Development Co. v FSS and Westminster City Council* [2003] EWHC 1592 (Admin).

⁸ Model Condition no. 43 of Appendix A to government Circular 11/95 - 'The Use of Conditions in Planning Permission'.

the breach to cease. This would avoid another unfortunate consequence that I foresee of taking enforcement action against individuals who may not be in breach of condition when such action would not be expedient and might significantly prejudice their interests.

27. As I have found, the change to sole or main residential use would be a material change from the permitted use, and it would be open for the Council to take enforcement action against breaches of condition(s) controlling occupancy. It follows that on the balance of probabilities the proposed use would not be lawful, and that the Council's decision was well-founded.

The appellant put forward various court cases and appeal decisions in support of his case. The *Cotswold Grange*⁹ case mainly concerned restrictions on the numbers of caravans on the site and is of limited application in this case. The Dennington Caravan Park appeal decision¹⁰ was largely on the basis of the non-existence of an approved map defining where residential caravans could be located, and that the number size and location of caravans were matters outside of planning control. Again, I consider this of limited application in this case.

Conclusions

28. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of proposed use of the land for the purposes of human habitation, including as a person's sole or main place of residence at Merryhill Country Park, Telegraph Hill, Honingham NR9 5AT 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.

Stephen Brown

INSPECTOR

⁹ *Cotswold Grange Country Park LLP v SSCLG & Tewksbury District Council* [2014] EWHC 1138 (Admin).

¹⁰ Appeal decision ref. APP/A0665/X/09/2109738, dated 16 February 2010.

