
Appeal Decision

Site visit made on 27 January 2021

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2021

Appeal Ref: APP/V0510/X/20/3258954

Land at Riverside Caravan Park, 21 New River Bank, Littleport CB7 4TA

- 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 Tommy Murphy, Murphys Residential Park Homes Limited, against the decision of East Cambridgeshire District Council.
 - The application Ref 20/00437/CLP, dated 20 March 2020, was refused by notice dated 3 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 siting of 55 caravans with permitted year-round use and unrestricted occupation.
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DECISION

1. The appeal is dismissed.

REASONS

Main Issue

2. The main issue is whether the local planning authority's decision to refuse the application is well-founded.
3. The relevant date for ascertaining whether the proposed development would be lawful is the date of the application, 20 March 2020. No issues of planning merit are relevant.
4. The onus of proof is on the appellant and the standard of proof is the balance of probabilities. The nub of the appellant's case is that the land has an established lawful use as a caravan site for 49 units and an increase from 49 units to 55 units would not constitute a change of use of the land or constitute development.
5. As set out in Planning Practice Guidance there is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case¹.

¹ Planning Practice Guidance: When is permission required? Paragraph: 011 Reference ID: 13-011-20140306

6. The appellant and the Council have drawn particular attention to several judgements. These include those related to a material change of use and intensification, and the use of planning conditions to control development².
7. Case law has established that an essential consideration is whether there has been a material change in the definable character of the use of the land, as opposed to a change in the particular purpose of a particular occupier. Off-site impacts are relevant, as well as planning purposes, the policy context and the planning consequence(s) of the loss of an existing use. A material change of use can occur where an existing use is intensified so that although the same description may still be applied to it, the use has undergone a change in character. The doctrine is applied when the only way to distinguish between the former and present uses is in terms of scale. In deciding whether a proposed use would amount to a material change of use the relevant comparison is between the existing use on the ground and the proposed use.
8. The appellant and the Council also have referred to a number of appeal decisions to support their respective cases. The Inspectors considered whether or not a proposed increase in the number of caravans on a site or intensification of an existing use would bring about a definable change in the character of the use of the land and involve a material change of use. These decisions are relevant in so far as they illustrate the application of the principles involved but they are fact sensitive. The absence of a restriction on the number of caravans is not necessarily decisive as to whether an increase in caravan numbers would be lawful. The decisions do not provide direction one way or the other as to the outcome in this appeal.

The site

9. The defined area of land, about 1.2 hectare, is a caravan park on the outskirts of Littleport. The red line shown on the site location plan also encompasses the adjacent dwelling and garden at 21 New River Bank, which the appellant has certified is in his ownership. No further explanation is provided by the appellant why this property is considered to form part of the same planning unit as the caravan site or is included within the red line boundary. Nevertheless, it is not a matter that has been disputed by the local planning authority. I will proceed on the basis of the submitted plan.

Planning history

10. The planning history dates back to October 1980 when planning permission was granted for the siting of touring/static caravans and camping site (ref E/0507/80/F). The site was for holiday purposes only as shown by condition 8, which required no use of the 6 static caravans for human habitation between 31 October and 1 March the following year and the removal of all touring caravans and tents from the site during that period. Planning conditions also related to access and landscaping.

² The judgments include *Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal and Waste Recycling Ltd* [2012] EWCA Civ 1473; *Reed v Secretary of State for Communities and Local Government* [2014] EWCA Civ 241; *I'm Your Man v Secretary of State for the Environment, Transport and the Regions* [1998] WL 1042297 and *Cotswold Grange Country Park LLP v Secretary of State for Communities and Local Government* [2014] EWHC 1138 (Admin)

11. Over the following years further planning permissions were granted that approved alterations to the access, site layout and landscaping and variations to the winter occupancy conditions.
 - In 1984 provision was made for the occupation of the six static caravans by fishermen and naturalists between 31 October and 1 March in accordance with a section 52 agreement (condition 6). No more than ten tourist caravans were allowed to be stored on site, but not occupied, during the off-season period. (ref E/0066/84/F).
 - In 1988 permission was granted for 'variation of caravan occupancy from 6 to 12 static (seasonal) and 43 to 37 touring' caravans. A condition imposed a similar restriction on the off-season use of the 12 static caravans as imposed previously in 1984. (ref E/0109/88/F).
 - In 1991 permission was granted for changing 12 non-permanent caravan sites to 12 permanent caravan sites, subject to a restriction on occupation of the twelve static caravans during the off-season period (ref E/1319/89/F).
 - In 1995 permission was granted for variation of condition 6 of planning permission E/0066/84/F. The permission was in accordance with the plans, drawings and documents that formed part of the application. Condition 2 placed restrictions on occupation of the six static caravans between 1 May and 31 October and, in relation to four static caravans, between 3 October and 1 May. The reason for the condition was to uphold the rural settlement and tourism policies of the local plan. (ref E/95/0651/F).
12. The development described in the original 1980 permission was 'siting of touring/static caravans and camping site'. As far as can be seen from the submitted documents, the subsequent permissions varied the conditions but did not grant permission for a new or different use. None of the permissions had a condition specifically controlling the total number of caravans on the site. Nevertheless, conditions restricted occupancy and periods when caravans were stationed on the site and in that context identified numbers of static and touring caravans. Over the years increased flexibility in occupation was approved. The appellant has not confirmed directly which of the permissions subsequent to the 1980 permission were carried out.
13. In the appeal documents are site plans for the 1984 permission and whilst of poor quality they show quite a spacious layout of caravans, a number of trees within the site, a children's play area, a toilet block and an area for camping. The dwelling at 21 New River Bank was not on the more detailed layout plans. No other plans are provided, nor a copy of the section 52 agreement. The Council's assessment concludes that planning conditions on access, landscaping, layout and highways continue to constrain the site layout.
14. Three certificates of lawful use or development (LDC) have been issued, when the Council certified that:
 - On 29 November 2017 the use of the site for "13 static caravans and 36 touring caravan pitches providing a total of 49 caravans on the site with permitted year-round use and unrestricted occupation" was lawful within

the meaning of s191 of the 1990 Act (ref 17/02038/CLE) (the s191 LDC). No Notes are attached to the copy of the certificate.

- On 14 February 2018 the proposed use of the site for 24 static caravans and 25 touring caravan pitches providing a total of 49 caravans on the site with permitted year-round use and unrestricted occupation would be lawful under section 192 of the 1990 Act (ref 18/00208/CLP) (the first s192 LDC).
 - On 24 April 2018 the siting of a total of up to 49 caravans (static or touring) on the land with permitted year-round use and unrestricted occupation would be lawful under section 192 of the 1990 Act (ref 18/00551/CLP) (the second s192 LDC).
15. The site location plan referred to in Schedule 2 of the s191 LDC and Schedule 2 of the first and second s192 LDCs identifies essentially the same area of land as shown on the site plan accompanying the current appeal.
16. A caravan site licence dated 17 January 2018 ref PH/80/450 was in operation at the relevant date of 20 March 2020. I note that the licence identifies the site being entitled to two planning permissions for the use of the land as a caravan site, detailed as E/0507/80/F and E/0109/88/F. Condition 4 attached to the licence requires that the site density shall not exceed 50 caravans to the hectare and that the number of caravans shall not at any time exceed 49, comprising 12 static and 37 touring. The other conditions set requirements on marking of the site boundaries, the spacing between park homes/caravans and garden sheds. The site licence does not provide comprehensive controls or requirements on the site layout and matters such as the site access, parking and landscaping have been controlled by planning conditions.
17. The appellant has confirmed that this licence remains in operation as of 27 January 2021, although it is being updated to reflect use of the site for 49 residential caravans.
18. The available information on the planning history shows that up to 1995 and beyond the authorised use of the site was for the siting of touring/static caravans and camping site. The use was associated with tourism, not the provision of all year-round permanent residential accommodation. The probability is that the character of site, derived from the physical features, caravans and layout, the pattern of use and activity, and any off-site effects, reflected that tourism use. The restrictions on occupation were in accordance with planning policy objectives for rural settlements and tourism.
19. The next chapter in the planning history from 2017 centres on the LDCs. A key distinction is that the first certificate was under s191 in relation to an existing use/development, whereas the subsequent LDCs were under s192 regarding proposals.
20. Section 191 may be used to ascertain whether any existing use, any operations that have been carried out or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful. With reference to s191(6), the lawfulness of any certified use, operations or other matters 'shall be conclusively presumed'. The statement in an LDC of what is lawful relates to the state of affairs on the land at the date of the certificate application. The protection from enforcement

action continues unless and until there is a material change in circumstances. The s191 LDC provides a benchmark against which the materiality of any subsequent change in the character or intensity of the certified use will need to be assessed. The certificate is not a planning permission but by virtue of s191(7) it has that effect for the purposes of issuing a caravan site licence³.

21. The appellant submitted that the s191 LDC 'wrapped up' the various planning permissions that established the caravan use of the site and established the lawful use as described in Schedule 1. Attention is drawn to the fact that the certificate makes no reference to the conditions of the previous planning permissions, an observation that also is made in respect of the s192 LDCs. The appellant maintained that the *Adams*⁴ judgement, relied on by the Council, is not relevant to the situation at Riverside.
22. The s191 LDC description of what is lawful focusses on the number of caravans, broken down into static and touring and the absence of restriction on their occupation, whether by season or person. The use of the site, the type of development and the purpose of the caravans is not described by the use of typical phrases such as a caravan and camping site, a caravan site, a residential park home site, or a caravan site for the purpose of providing permanent residential accommodation. Having regard to the statutory definition of a caravan, there is nothing to explain what is meant precisely by the terms a static caravan and a touring caravan. The balance is heavily weighted towards touring caravans, which make up 36 of the total of 49 caravans. A touring caravan generally is understood to be much smaller and with a greater degree of moveability than a static caravan. Touring caravans are often used for holiday purposes. With reference to the planning history of the site, the certificate may be interpreted as being in respect of matters constituting a failure to comply with conditions regarding occupation attached to previous planning permissions for the site.
23. The effect of the s192 LDCs is to certify that any proposed use or any proposed operation described would be lawful if 'instituted or begun' on the stated date. With reference to s192(4), the lawfulness of the use for which an LDC is in force under s192 'shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.'
24. At the Riverside Caravan Park the submitted s192 LDC applications sought a potential increase in intensity of use of the site from the lawful base level. First the number of static caravans within the overall total of 49 was increased, followed by the removal of a specific static/touring split. The most recent s192 proposal, now forming the appeal, seeks to increase the total number of caravans from 49 to 55, with no reference to static or touring caravans.

Effect on character

25. To support his case the appellant relies on a comparison between the proposed 55 caravan units and the caravan units in the second s192 LDC. However, the relevant comparison is with the present or actual use of the site at the time the appeal LDC application was made in March 2020. Even though the appeal form

³ A similar provision is not included in s192 of the 1990 Act

⁴ *Adams v Secretary of State for Housing Communities and Local Government and another* [2020] EWHC 3078 (Admin)

describes the actual use at the time of application to the LPA as “For the siting of 49 caravans with permitted year-round use and unrestricted occupation”, the probability is that simply reflects the appellant’s case and so repeats the description of the proposed use certified by the second 192 LDC. The appellant has not provided details to describe and demonstrate the character of the use on the ground. The evidence on the relevant position is assisted by photographs submitted by the Council.

26. The submitted red line plan, on an Ordnance Survey base, shows the in/out access arrangements on the New River Bank frontage and an internal loop road and the building Number 21. Other small buildings are indicated and the main body of the site is labelled Caravanning Site. An aerial image dated 27 September 2018 shows the same distinctive access arrangements, a fairly informal layout of caravans incorporating areas of amenity space particularly on the southern half of the site, and caravans of varying size, including small tourers.
27. The other photographs of the site were taken towards the end of 2020. They show the ongoing removal of the facilities block and amenity space, the introduction of new mobile homes and internal access roads and the provision of a bridge to the adjoining field to the south and outside the site. This evidence suggests on the balance of probability that in March 2020 the existing use of the site reflected the description in the s191 LDC and that changes in circumstances post-dated the relevant date. The material changes also took place after the stated date in the s192 LDCs.
28. When I visited the site at the beginning of 2021, the appellant confirmed there were 49 static caravans on the site. The in-out access arrangements around a planted island and a hard paved forecourt were dominant features on the frontage. Also near the site entrance were facilities and services including a reception building, gas cylinder store, rubbish compound and storage building. Beyond the access barrier the changes indicated by the Council’s photographs of late 2020 had taken place. The internal loop road and informal layout has been replaced by a grid pattern of internal access ways leading off a central route and a regimented and dense layout of caravans. Amenity space is limited to small gardens next to the caravan units and patches of incidental space. The continuous enclosure provided by boundary trees and hedgerows has been broken in the south west corner by clearance and the construction of a bridge link onto adjacent land. A fenced compound enclosing a septic tank is sited adjacent to the main central access way.
29. Supporting illustrative layout plans have been submitted during the appeal process to demonstrate how 55 caravans could be located on the site in conformity with the model standards set out in a site licence. Because the plans are illustrative, and are not to scale, they do not describe precisely what is being applied for. Be that as it may, the first illustrative plan shows the potential for 55 static caravans to be stationed on the site with each caravan measuring 10.66m x 3.8m (35ft x 12.5ft) with decking and adjacent car parking provided. This layout would require alteration to the access arrangements, including a single access point onto New River Bank and the removal of the open and landscaped frontage. All facilities and utilities such as the reception building, storage areas and waste disposal system would be lost. All caravans would be the same size, increasing the degree of regimentation and uniformity. The Council has shown that conditions of the site licence would

not be met in relation to requirements for site boundaries, distance and spacing and that such changes to the layout and site access would not be permitted development under Schedule 2 Part 5 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015.

30. The second illustrative plan shows a layout that would retain the frontage in-out access arrangement and reception building. The internal access ways would not be in the form of a simple loop road but would adopt a grid layout. The layout of the caravans would be very tight. The layout does not in fact show 55 caravans, but 54 caravans with a note 'with potential for at least two more caravans' applying to two rows. The increase in caravan numbers above 49 appears to involve the demolition of the storage building near the paved forecourt, thereby extending the area occupied by caravan accommodation.
31. The probable changes to the site layout, the touring/static caravan balance and on-site facilities would affect the residents' living environment, amenity and the way the site would function, taking account of the less spacious layout of units, loss of identity, increase in hardsurfacing and potential loss of facilities. These are all elements related to and informing the character of the use.
32. On this evidence alone and as a matter of fact and degree the increased number of caravans would result in a definable change in the character of the caravan site, whether compared to use described in s191 LDC or the use that on the evidence probably existed in March 2020, the date of the appeal LDC application.

Effect on neighbouring uses and locality

33. The appellant's consideration was based on an assessment of whether an increase from 49 to 55 caravans would have different off-site impacts. As explained above this is not the precise relevant comparison.
34. Accordingly, a significant impact on the neighbouring residential property at 22 New River Bank cannot be ruled out in view of the more dense layout and an increased number of static caravans. Also, there is no evidence to demonstrate that boundary treatment and landscaping would not be affected in any material way or how compliance would be achieved with existing planning conditions. As a result the likely effect on the visual amenity and the local landscape in views from New River Bank and the local footpath network has not been adequately explained.
35. The appellant's estimated 12% increase in traffic during full occupation was not explained and did not use the correct baseline. The Council's assessment which includes wider considerations such as pedestrian movement, parking and vehicle servicing, indicates that further evidence is required to enable a well informed conclusion on off-site highway and safety implications.

Conclusions

36. The development described in the original 1980 permission was 'siting of touring/static caravans and camping site'. To say, as the appellant does, that the use established by that permission is a caravan site is not sufficiently precise by failing to recognise the camping element.
37. The lawful use certified by the s191 LDC, in the context of the site history, also is not simply for a caravan site. The siting of a total of 49 caravans was lawful

- on that date but the benchmark was 13 static caravans and 36 touring caravans.
38. Against the background of the planning history of the site, the issue raised by the LDC application for the proposed siting of 55 caravans with permitted year-round use and unrestricted occupation is not confined to 'would an increase in 6 caravans result in a material change of use through intensification'. The appellant has focussed on a comparison between the description in Schedule 1 of the second s192 LDC and the description of the proposal, rather than a comparison with the existing use of the site around March 2020. The benchmark is not the description in the second s192 LDC.
39. In September 2018 the probability is that the site continued in its traditional character with a mix of caravan units, areas of amenity space and the distinctive access arrangements. The evidence is that no significant change had occurred by the relevant date. The caravan site licence was based on the 1980 and 1988 planning permissions.
40. To achieve the proposed use, the caravan park would undergo very significant changes based on the illustrative plans, which would impact on the character of the use. As a matter of fact and degree the increased number of caravans, with unrestricted use and occupation, would result in a definable change in character. The evidence has not shown that the proposal as a matter of fact and degree would amount to just more of the same use.
41. The appellant has not adequately addressed how the proposed increase in the number of units would be accommodated within the requirements of the existing planning conditions controlling layout, access and landscaping highlighted by the Council. The appellant's submitted evidence on the effects on neighbouring uses and locality has little weight. All matters considered, the application has not described precisely what is being applied for, nor has it described with sufficient precision the land to which the application relates. The appellant has not discharged the burden of proof.
42. 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 55 caravans with permitted year-round use and unrestricted occupation is 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.

Diane Lewis

Inspector