



Appeal Decision

Site visit made on 2 March 2021

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2021

Appeal Ref: APP/D2510/X/18/3217272

Y-Not Caravan Park, Skegness Road, Ingoldmells, Skegness PE25 1JL

- 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 D Murfin against the decision of East Lindsey District Council.
 - The application Ref S/090/00936/18, dated 20 April 2018, was refused by notice dated 11 August 2018.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of the land for the stationing of permanent residential caravans, used all year round.
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Decision

1. The appeal is dismissed.

The Appeal Site and Background

2. The appeal site lies on the western edge of Ingoldmells. It contains a dwellinghouse and garage, together with a caravan site containing 9 individually numbered (1-9) caravans, a hard surfaced parking and manoeuvring area, a small blockwork structure signed 'laundry', and a gas bottle storage area.
3. Planning permission was granted for the use of the land as a holiday caravan site in January 1976¹ (ref. SP/794/73). Condition 2 of that permission stated:

"The use of the holiday caravans shall be limited in each year to the period from 15 March to 31 October".

The reason given was:

"It is the policy of the district planning authority not to permit the permanent use of this type of development".

4. On 14 September 1995 a further planning permission was granted "...to vary condition 2 (occupancy restriction) imposed on planning permission ref. no. SP/794/73 to extend occupation period of existing holiday caravan site from 15th March to 31st October, to use between 1 March to 30 November" (ref. S/090/1226/95), and an amended condition (no.2) was attached. It states:

¹ The appellant indicates that this permission was granted in 1973. However, while the planning permission gives the date of application as 5 July 1973, the notice of approval is dated 8 January 1976.

"The site shall not be used as a caravan site between the 30th November in any one year and 1st March in the succeeding year."

The reason given was:

"To prevent permanent occupation of the caravans as the site is shown in the approved East Lindsey District Plan for primarily holiday development".

The LDC Application and the Section 195 Appeal

5. The appellant has not indicated which subsection of section 191(1) the LDC application was made under, but the response to question 8 on the LDC application is worded as set out in the case particulars above. In addition, the reply to question 9 states that, *"The use of the land for stationing permanent residential caravans commenced at or before 1996 and has been continuously used as the same..."*. All this points to the LDC having been sought for a use, a matter to which section 191(1)(a) applies. I shall therefore consider the appeal on this basis. That said, as one of the main premises relied on by the appellant is that condition 2 attached to the 1995 planning permission has been breached continuously, I shall have regard to this matter in coming to my decision.
6. Both the Council's notice of refusal and the appellant's appeal form give the date of receipt of the LDC application as 16 May 2018, but the date indicated on the application form is 20 April 2018. In order to demonstrate lawfulness, it has to be shown that the use in question commenced more than 10 years before the date of the LDC application and that the use continued thereafter without significant interruption throughout the subsequent 10 year period. In this instance, the relevant 'benchmark' date is 20 April 2008. As the appellant notes, the test for the evidence is the balance of probability², and the Courts have held that in cases such as this, the onus on proving it lies with the appellant.

Reasons

The Appellant's Evidence – Main Points

7. Observing that the caravans on the site have been occupied by workers in the tourism industry and by market stall holders, the appellant contends that the site has been occupied during what is referred to as the 'closed period', that is between 30 November and 1 March, as per condition 2 of the 1995 planning permission, in each of the 10 years preceding the LDC application.
8. In a statutory declaration, Mr Murfin indicates that he purchased the caravan park in February 2004. At that time, most of the caravans were occupied, and for the vast majority of the tenants, this was their permanent residence. He was aware that the previous owner of the site rented the caravans which, in most cases, were being occupied all year round, on a long-term basis. He has continued to operate the park in the same manner.
9. Statutory declarations by the occupiers of the 2 neighbouring properties on Skegness Road, who state that they have lived at their present addresses since 1999 and 2007 respectively, both refer to caravans on the site being occupied all year round. One of the neighbours also indicates that she acted as a site

² Paragraph 1.2 of the Council's appeal statement erroneously refers to the test as "beyond reasonable doubt", but paragraph 9.10 of the Officers Report applies the correct "balance of probability" test.

caretaker for both the appellant and the previous site owner whilst they were away on holidays.

10. In another statutory declaration Mr M Shah states that he rented caravan no.6 from 1996 through to 2013. He goes on to say that, save for holiday breaks, he occupied the caravan on an all year round basis with his brother until 2006, following which it was occupied in the same manner by his brother and employees of his business at the market nearby. In addition, from the beginning of 2012 to the end of the 2013 season, a further caravan on the site was rented to accommodate additional employees on an all year round basis.
11. Appended to the appellant's declaration are items of correspondence from the Council regarding Housing Benefit, a letter from the Prison Service requiring a tenant's caravan to be retained pending his release, and another from the landlady of a local public house indicating that an advertisement for caravans to let at the Y-Not Caravan Site had been always displayed on the premises. On top of all this is a detailed schedule of rental payments appertaining to each individual caravan on the site on a month by month basis that spans a period from the beginning of 2008 to February 2018.

Appraisal

Material Change of Use

12. The 1976 planning permission approved the use of the land as "*a holiday caravan site*". This expression was reiterated in the 1995 planning permission, when it was preceded by the word "*existing*". In the light of this, it is reasonable to assume that the 1976 permission was implemented – it is not claimed otherwise - and that the lawful use of the land is a holiday caravan site, controlled by condition 2, as varied by the 1995 permission.
13. Mindful of *Winchester City Council v SSCLG [2015] JPL 1184*, the scope of the approved use as described on the notice of approval is very specific and readily identifiable. "*Holiday*" clearly qualifies the term "*caravan site*" and is as much a component of the permitted use as the word "*caravan*" is. Not only does this define the nature of the use in a manner that gives it a particular meaning, but also the intent behind this is clearly set out in the reasons given for condition 2 in both the 1976 and 1995 planning permissions, albeit the 2 versions are worded somewhat differently.
14. Despite the reliance placed upon the implications of the claimed non-compliance with condition 2, the appellant makes no claim that the use in question falls within the ambit of the lawful use. Be that as it may, I regard it as incumbent upon me to address this point at the outset. The approved use and that for which the LDC is sought are not dissimilar in that both involve the stationing and occupancy of caravans at the appeal site. However, I consider there are marked and significant differences in terms of their nature.
15. The Cambridge Dictionary defines "*holiday*" as "*a time when someone does not go to work or school but is free to do what they want, such as travel or relax*". From this it follows that caravans are sited for a distinctly different purpose from that of everyday or permanent residential accommodation. A holiday use is likely to be characterised by a multiplicity of separate periods of occupancies and changeovers as holidaymakers arrive and depart. As a result, the overall pattern of occupancy throughout the year is somewhat ephemeral, with peaks

in the summer months and troughs in the winter. A use involving all year round occupancy, on the other hand, is unlikely to display such traits. Instead of being devoid of light and other human activity during the winter months, permanent residential occupancy would result in a year-round state of domesticity on the site and a notably more settled pattern of occupancy would be likely to ensue.

16. All year round occupancy with people using the caravans as their homes, as appears to be the case here, judging by comments made in the statutory declarations by people who have occupied the caravans, is likely to be manifested in closer links to, and demands placed upon, the local community. This, in turn, is likely to have tangible implications for the provision of community services such as medical, social, cultural and educational facilities which holidaymakers are unlikely to draw upon, or not to anything like the same extent. It is also likely that there would be more visits to the site by vehicles delivering post, mail order goods and the like, together with social calls by friends and relatives of the residents
17. The on and off site effects I have identified constitute a marked change in the definable character of the site's use as a holiday caravan site. Accordingly, therefore, I conclude that, as a matter of fact and degree, the change in the character of the use for which the LDC is sought is substantially and significantly different from the lawful use of the site to the extent that it amounts to a material change of use.
18. According to the LDC application form, the use was existing at the time the application was made and had begun more than 10 years beforehand. Indeed, the application form is very specific in that the date given for this is 1 January 1996. This clearly is well in excess of 10 years before the date of the LDC application, but the significance, if any, of this date has not been elaborated upon.
19. The notice of approval for the 1995 planning permission indicates that the application was received on 9 August 1995, and given what the permission was being sought for, it seems probable that the lawful use of the site was still in being then. There is nothing that suggests or indicates otherwise – the appellant's case is silent on this point. Nor does it give any indication that shows what, if anything, changed in the 4 months between August 1995 and 1 January 1996.
20. That said, there is evidence contained in the statutory declarations – none of it challenged by the Council – which points to some caravans at least having been occupied on a more permanent basis prior to April 2008. Mr Shah refers to his occupancy going as far back as 1996 (albeit he does not say when in that year), and Mr Murfin refers to "*most*" of the caravans being occupied when he purchased the site in February 2004. In addition, one of the neighbours uses the term "*the majority*" in this respect; while the other neighbour refers to caravans "*close to his boundaries*" being occupied continuously all year round.
21. While I accept that this evidence tends to lend support to the appellant's case, it does not paint a particularly clear picture of just how the caravan site as a whole was used. For instance, Mr Shah's evidence only concerns one caravan – there is no mention of the pattern of occupancy of the other caravans on the site. And, while the other parties' observations appear to apply to more than

one caravan, their evidence does not shed much light on the pattern of occupancy across the site as a whole.

22. In particular, it is far from clear whether the holiday caravan site use still remained extant to some extent at least from 1996 onwards, including during the years after April 2008. The appellant has not advised whether vestiges of the lawful use still persist to this day. It is also unclear whether, if the authorised use had ceased, it was supplanted by the stationing of permanent residential caravans, used all year round, in one fell swoop, or whether the transition from the lawful use to this use was a gradual process that took place over the years, possibly even extending after April 2008. The lack of specificity in this respect makes it very difficult to establish the point at which a material change from a holiday use to a permanent all year round residential use occurred; indeed the possibility that a mixed use might have been involved at some stage cannot be discounted. The evidence is seriously lacking in clarity.
23. The monthly rent schedules provide a comprehensive record of occupancy during and just prior to the 10 year period up to April 2018. This information is very helpful as it provides a reasonably reliable and detailed insight into the extent in which the caravans on the site were occupied during the years it covers. As the schedules have not been called into question by the Council, I am inclined to attach a great deal of weight to this evidence.
24. However, while the schedules identify which individual caravans rent was paid for and when, the entries do not indicate who made the payments. Nor is the duration of the tenancies indicated either. The statutory declarations by the other former tenants refer to their all year round occupancy of caravans on the site, but as the dates they mention all fall within the 10 year period prior to April 2018, they offer little assistance insofar as establishing whether the use in question is lawful is concerned. The same applies to the items of correspondence from the Council and the Prison Service.
25. No other material, such as tenancy agreements, receipts, electoral roll entries, utility and Council Tax bills and suchlike, all of which could help to build up a more comprehensive picture of just how the site was used prior to and since April 2008 has been put forward. It may be that the availability of caravans to let has been advertised locally for some time, but this evidence offers little insight as to the actual manner in which the site was used.

Continuity of Use

26. In indicating that caravans have been occupied during what the appellant terms the 'closed period', great reliance is placed upon the contention that there has been a failure to comply with condition 2 of the 1995 planning permission in each of the 10 years preceding the LDC application. Notwithstanding my serious misgivings about the lack of clarity in the evidence concerning when the use for LDC is sought actually began, I shall also examine question of the continuity of the use.
27. In support of this part of the appellant's case, citing *Burdle v Secretary of State for the Environment* [1972] 3All E.R.240, concern is expressed about the scope of condition 2 in that it refers to the use of the site as opposed to the occupancy of the caravans. That said, while the wording of condition 2 differs from that set out in the model condition regarding seasonal caravan sites

- contained in Circular 11/95 [since withdrawn]³, which was extant when the 1995 planning permission was granted, no claim is made that the condition is invalid, and I see no reason to question it in this respect.
28. Section 336(1) of the 1990 Act indicates that “*caravan site*” has the meaning given in section 1(4) of the Caravan Sites and Control of Development Act 1960. The latter states, “*In this Part of this Act the expression “caravan site” means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed*”.
29. Having regard to this provision, the occupancy of caravans has to be seen as a characteristic and integral feature of a caravan site. It is therefore reasonable to regard the term “*caravan site*” in condition 2 as something that encompasses the occupancy of the caravans within it. Moreover, when the condition is read in conjunction with the reason given for it, “*to prevent permanent occupation of the caravans...*”, it is clearly intended to limit the temporal scope of the occupancy of all the caravans involved. The lawful use of the appeal site is likely to have been facilitated by the stationing of caravans within it, and, by implication, those caravans should not be occupied during the site’s ‘closed period’.
30. It may be that the caravan site is a functional unit as the appellant contends, but I am not satisfied that the judgement in *Burdle*, which identifies tests for determining the appropriate planning unit, goes to the heart of the matter here. In this respect I am mindful that in *St Anselm Development Co. v FSS and Westminster City Council* [2003] EWHC 1592 (Admin) it was held that a breach of condition concerning part of a planning unit (in that case parking spaces) did not confer immunity on the entirety of the area covered by the condition.
31. The planning permissions for the use of the land contain no reference to the number of caravans, nor has it been indicated whether there is an approved site layout plan. Be that as it may, the rental records consistently refer to 9 caravans. And, as I saw, they are all numbered individually, so each one is readily identifiable. Moreover, no evidence that shows that caravans have been moved around within the site has been adduced. With this in mind, together with the judgement in *St Anselm*, I am unable to concur with the appellant’s view that occupancy has to be evaluated on the basis of the site as a whole, does not have to involve the same individual caravan, and could involve different caravans in different years.
32. The Planning Practice Guidance regarding LDCs indicates that a certificate needs to spell out the characteristics of the matter so as to define it unambiguously and with *precision* [my Italics]⁴. In this case this calls for an assessment of not only whether the use has been continuous for the requisite period, but also to what extent this may have occurred. In order to achieve the necessary degree of precision here, it is both reasonable and appropriate to examine the component parts of the use, in particular the pattern of occupancy of the individual caravans involved.

³ Withdrawn Circular 11/95 Appendix A, model condition 43.

⁴ Planning Practice Guidance: Lawful Development Certificates, paragraphs 005 & 010.

33. As well as the records of payments in the 'summer' months, the rental schedules contain numerous instances of payments having been made during the 'closed period' over the years. In addition, the records indicate that at any point in time during these periods, one or more of the caravans on the site appear to have been occupied. It is perhaps not surprising therefore that parties such as the neighbours have referred to caravans on the site being occupied all year round.
34. That said, the appellant contends that the number of caravans let for the whole of the 'closed period' has consistently been "*around four*". While figures to support this have been set out in tabular form⁵, the individual caravans, which the numbers in the "*No. of caravans let over 'closed' period*" column appear to be based upon, are not identified. Furthermore, as the numbers fluctuate – they range from 2 to 7 – it is far from clear just how continuous the use is claimed to have been.
35. The rent payment schedules indicate that there are a good number of occasions when the weekly rent for various caravans has been paid for the whole of the 'closed period'. On the face of it, therefore, this tends to lend credence to the appellant's claim that the site has been occupied during this period in each of the 10 years preceding the LDC application. However, the records also show that none of the individual caravans have been occupied throughout the 'closed period' on a continuous basis throughout the requisite 10 year period.
36. The schedules indicate that during the 'closed period' in the 10 years prior to April 2018, there has been at least one break in payments lasting 10 weeks or more for each individual caravan. I accept that, for the reasons given by the appellant, relatively brief spells of vacancy are perhaps inevitable in an instance such as this where caravans are let individually. Be that as it may, as a matter of fact and degree, I regard these breaks as significant to the extent that they each amounted to a cessation of the continuity of the use. In these circumstances, the 10 year 'clock' would have stopped and would have started all over again once this type of occupancy resumed.
37. Looking at the rental records across the board reveals a 'patchwork quilt' of periods of occupancy and non-occupancy of the caravans during the 'closed period'. There are times when condition 2 appears to have been complied with, while on other occasions it has not. Nevertheless, irrespective of whether or not the use in question is viewed through the prism of a breach of condition, or the use itself, the requisite degree of continuity has not been demonstrated.

Overall Conclusions

38. I acknowledge that an appellant is often best placed to provide evidence concerning the nature, extent and manner in which activities have taken place on land over the years. I am also mindful that in this case the Council have produced no evidence of their own that contradicts or otherwise calls the appellant's evidence into question. As I have already noted, the lawful use of the appeal site is a holiday caravan site. While there is evidence that the use for which the LDC is sought may have begun well before 20 April 2018, whether this change amounted to a *material* change of use is far from clear.

⁵ Appellant's statement, paragraph 4.15.

39. The detailed rental payment records from the beginning of 2008 onwards offer more clarity, but they also reveal significant breaks in occupancy which are inconsistent with a continuous use. Coupled with my misgivings about the robustness of the evidence regarding the change of use, I am not satisfied that the use has been shown to be lawful.
40. The circumstances of this case are such that I find the appellant's evidence lacks sufficient precision and clarity to the extent that it falls short of demonstrating, on the balance of probability, that there was a material change of use of the site to use for the stationing of permanent residential caravans, used all year round more than 10 years before the date of the LDC application, or that this use then continued actively throughout the subsequent 10 year period. The burden of proof that lies with the appellant has not been discharged.
41. For the reasons given above, and having regard to all the other matters raised, I am satisfied that the Council's refusal to issue a LDC in respect of use of the land for the stationing of permanent residential caravans, used all year round at Y-Not Caravan Park, Skegness Road, Ingoldmells, Skegness PE25 1JL was well-founded. I shall therefore exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
42. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

D H Brier

Inspector