



Appeal Decision

Inquiry Held on 20 January & 8 February 2021

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 20 April 2021

Appeal Ref: APP/W1145/X/18/3217092

Acorn Farm Park, The Square, Dolton, Devon EX19 8QF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Royale Parks (Dolton) Ltd against the decision of Torridge District Council.
 - The application Ref 1/1065/2018/CPL, dated 2 October 2018, was refused by notice dated 16 November 2018.
 - 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 described as use of the land for the siting of static caravans for twelve months of the year for the purposes of human habitation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It was agreed by the parties that I didn't need to make a visit to the site. That is because the appeal turns on legal points, and because the main parties have submitted sufficient plans and documentary evidence for me to fully understand the nature of the site and the issues in dispute between them.
3. All evidence to the Inquiry was given on oath.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC for the use of the caravan park for permanent year-round residential occupation was well founded. This rests on the interpretation of the conditions of previous planning permissions, as well as to which permissions were necessary and implemented. This in turn requires an assessment of the site history, and which areas of the site relate to which permissions.
5. The appellant's case is based on two alternative arguments. First, that the permissions granted in 1983, 2003 and 2013 do not restrict the occupation of caravans on the site, however many of them there are and however they are occupied – including for year-round permanent residential occupation – save for when touring caravans are stationed on the site. Or, secondly, alternatively, that year-round occupation of static caravans for permanent human habitation

- would not be materially different to their year-round occupation for holiday accommodation.
6. The Local Planning Authority's (LPA) case is that various permissions with reference to their conditions together restrict the use of the caravans to year-round holiday accommodation and that, if it is necessary to consider the alternative argument, the use of the caravans for permanent human habitation would be materially different to their use for holiday accommodation.
 7. In simple terms, if the proposed use falls within the existing lawful use of the land, the LDC should be granted. If it does not, but the proposed use would not involve a material change to the existing lawful use, the LDC should be granted. In all other circumstances, the LDC should be refused.
 8. I deal with each of these alternative arguments in turn, having first set out the details of the permissions.

Reasons

The Permissions

9. The relevant planning permissions are:

0545/1983 – Use of land (Fields 649 & 652) as a touring caravan site, granted **4 October 1983** with three conditions. Condition 1 was the standard 5-year commencement condition. Condition 2 prevents caravans being stationed on the land shown in blue on the approved plan, the 'amenity area' on the western part of the site (the blue land). Condition 3 restricted the occupation of the caravans between 15 November in any one year and 15 March the following year.

2305/2002 – Section 73 (S73 of the 1990 Act) application: Variation of above Condition 3 to allow 12-month holiday occupation of the touring caravan park, granted **17 February 2003** with one condition. Condition 1 restricts the use of the site to holiday accommodation only and for no other purposes (including any Class C3 use).

1884/2003 – Section 73 application: Variation of Condition 2 of the 1983 permission to retain touring caravans (for storage purposes) on site all year round, granted **21 November 2003** with two conditions. This related to an area of 50m by 9m in the north west corner of the site (within the blue land). Condition 1 required the submission and approval in writing by the LPA of a landscaping scheme within 2 months and its implementation during the first planting season. Condition 2 restricted the use of this area to the storage of touring caravans only.

1176/2012 – Section 73 application: Removal of Condition 2 of the 1983 permission - for 20 touring caravans on part of the blue land, granted **14 March 2013** with three conditions. Condition 1 is a nonsensical requirement for the development to be begun not later than 4 October 1988. Condition 2 requires the development to be carried out in accordance with the approved location and block plans. Condition 3 prevents works/development taking place until a full landscaping plan has been submitted to and approved in writing by the LPA, and subsequently implemented at the times specified in such a plan.

0740/2014 – Proposed holiday lodges, granted **17 September 2014** with four conditions. The site area shown within the red line on the location plan was the access road through the eastern part of the site and the whole of the western part of the site (Field 649 and a small part of Field 652). Condition 1 was the standard 3-year commencement condition. Condition 2 required the development to be carried out in accordance with the location plan. Condition 3 restricted the use of the site to holiday accommodation only and for no other purposes (as per Condition 1 of the February 2003 permission). Condition 4 required the owner of each lodge to keep a record of all persons who have occupied it for holiday purposes, such records to be made available to the LPA upon its written request.

0892/2017/CPL – Certificate of Lawful Use granted **21 November 2017** for use of land for the siting of static caravans for 12 months of the year, for the purpose of holiday accommodation only. The red line of the plan attached to this LDC shows the whole site, the blue line shows Acorn Farmhouse and the land opposite it on the northern side of the access road into the caravan site.

NB The 1983 and 2014 permissions were on the basis of full planning application forms having been submitted.

The Existing Lawful Use of the Land

10. S73 of the 1990 Act confers the power to amend, substitute or remove conditions attached to previous planning permissions, but not to amend any other part of the decision. Despite the terminology, it is important to be clear that the outcome of a successful S73 application is not to amend the terms of the existing earlier permission: that remains completely unaltered. Rather, the outcome is the grant of a wholly new planning permission, which the applicant is entitled to implement or not.
11. Consequently, the two 2003 permissions and the 2013 permission were S73 permissions that amended, varied and removed Conditions 2 and 3 of the 1983 permission and in themselves created new planning permissions with their own conditions. They could have been implemented or not.
12. There is no dispute between the parties that the site's lawful planning use is as a caravan park and that there is no planning control on the types, sizes or numbers of caravans on the site¹, notwithstanding that there is a Caravan Site License dated 15 August 2018 (Ref 18/01160) that licenses the site for 36 static caravans for holiday purposes only, restricted to occupiers aged 45 years and over. The dispute concerns whether any planning condition restricting the caravans to holiday use was in force at the time the application was made.
13. It is uncontested that the 1983 and 2003 permissions were implemented and that these and the 2013 permission relate to essentially the same area of land as a single planning unit, the caravan park. I accept that the use of the land as a caravan park had already started when the 2013 permission was granted, hence the reason why Condition 1 makes no sense in that it required a retrospective start date of five years from when the 1983 permission was granted. Clearly such a condition, even if it made sense, was unnecessary since the 1983 permission had been implemented by 4 October 1988.

¹ Provided they comply with the size and moveability limits set out in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968

14. However, Mr Eiser for the appellant accepted at the Inquiry that none of the works the subject of the 2013 permission have taken place. Those works relate to the layout of 20 caravan units in a horseshoe-like pattern in the central part of the blue area, retained amenity land and the planting of indigenous trees and shrubs on their northern side. Condition 2 of the permission requires the development to be carried out to follow this layout in the approved plans. This has not been done, as is clear from the 2019 Google Earth aerial photo at paragraph 4.16 of Mr Evely's Proof of Evidence, which shows the concrete pads for the static caravans essentially as set out in the layout plan attached to the Caravan Site License – a completely different layout with no amenity space.
15. Condition 3 of the 2013 permission requires the submission and prior agreement of the LPA of full details of tree planting and landscaping prior to works taking place, and then the implementation of such works to the agreed timetable. There is no dispute that such details were never submitted and so this condition has not been discharged.
16. The question that arises is whether this condition goes to the heart of the permission. That is a valid question because the 2013 permission is a free-standing planning permission, which is capable of implementation or not. If it does go to the heart of the permission or is central to it, then the permission has not been implemented. This is the agreed test in caselaw.²
17. The reason for the imposition of the condition states: "*In the interests of the visual amenities of the area and to minimise the effect of the proposal on the amenities of the occupiers of adjacent premises.*" The caravan site is situated on the western side of the village next to the primary school and village playing field and within site of the windows and back gardens of the nearby houses on Cleave Hill and West Lane. As such its landscaped screening is obviously vitally important, especially to the neighbouring residents. Hence it is understandable why these landscaping details needed to be agreed before the layout of the caravans/pitches on the blue land. Such details were vital to protect neighbours' living conditions from the effect of the development of the blue land, which had previously been prevented by Condition 2 of the 1983 permission.
18. For these reasons Condition 3 of the 2013 permission was a condition precedent, which means that any work started prior to the discharge of this condition would not have had planning permission – because the restriction of the blue land as an amenity area (free of caravans) would have remained in place. I have already set out that the works the subject of the 2013 permission did not take place and so this is of little relevance. But even if that was not the case and such works did actually commence, since Condition 3 was not discharged they would have been unauthorised because the 2013 permission was incapable of implementation.
19. This leaves the holiday occupancy condition (Condition 1) of the February 2003 permission still in force on the caravan park. The appellant made extensive legal submissions³ that the description of development in a planning application

² *R (oao Hart Aggregates Ltd) v Hartlepool BC* [2005] EWHC 840 (Admin), as affirmed by *Greyfort Properties Ltd v SSCLG & Torbay Council* [2011] EWCA Civ 908

³ *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 77 P&CR, *Winchester CC v SSCLG & Others* [2013] EWHC 101 (Admin) & [2015] EWCA Civ 563, *R (oao Altunkaynak) v Northamptonshire Magistrates Court* [2012] EWHC 174 (Admin), *Smout v Welsh Ministers and Wrexham County Borough Council* [2011] EWCA Civ 1750, & *Cotswold Grange Country Park LLP v SSCLG & Tewksbury DC* [2014] EWHC 1138 (Admin).

- cannot restrict the permitted use in the absence of a planning condition setting out such a specific restriction. That is not disputed by the LPA.
20. But the appellant, based on this caselaw, argues that Condition 1 only applies to touring caravans (my emphasis). It claims that this is not a “having their cake and eating it” argument. Whilst I accept that a touring caravan is commonly understood to be a caravan with wheels that can be pulled behind a car and can therefore be distinguished from a static caravan, that is irrelevant to the argument here.
21. The original 1983 permission is for the use of the land as a “*touring caravan site*”. The February 2003 permission sought to vary the original wording of the holiday occupancy condition – on the whole site – and describes the caravan park as a “*touring caravan park*” to reflect the 1983 permission. The reference in Condition 1 of the February 2003 permission to a “*touring caravan park*” is simply a repetition of the description of the development, which is clearly apt given that this was a S73 application.
22. The LPA has consistently endeavoured to restrict the whole of the caravan site to holiday occupation. That was confirmed by the 2017 CLU. The February 2003 permission did not seek to limit the holiday occupancy to touring caravans only. It simply decided to allow year-round holiday occupancy of all the caravans on the site, rather than preventing the site’s occupation during the winter months. That is clear from the Committee Report of 27 January 2003 set out in the planning history documents. The appellant’s argument that Condition 1 only restricts touring caravans to holiday occupancy is simply wrong and amounts to no more than wishful thinking and certainly is an attempt to “have its cake and eat it”.
23. In summary, for the above reasons the 2013 permission was not implemented. The fact that it did not contain a holiday occupancy condition is therefore irrelevant. The February 2003 permission, which the parties agree applies to the whole of the caravan site, contains the revised holiday occupancy condition.
24. In 2014 a new full planning permission was given for holiday lodges. Whether or not this permission was necessary, in terms of *Newbury*⁴, is a moot point. That is because if it wasn’t necessary – because earlier permissions had in effect given permission for any type of caravan – then Condition 1 of the February 2003 permission continues to restrict all caravans to holiday occupancy only. If the 2014 permission is valid as a free-standing permission, then its Condition 3 restricts all caravans on the site to holiday occupancy only, because it has clearly been implemented by virtue of the installation of all the concrete bases for the lodges. Whilst it only relates to the western part of the site, Condition 1 of the February 2003 permission continues to restrict caravans on the eastern part of the site to holiday occupancy only.
25. For these reasons the lawful planning use of the appeal site is as a caravan park restricted to holiday occupancy only. There is no lawful planning limit to the types, sizes or numbers of caravans on the site provided they comply with the legal definition of a caravan, although the Caravan Site License of 15 August 2018 (granted under completely different legislation⁵) licenses the

⁴ *Newbury DC v SSE [1981] A.C. 578*

⁵ Caravan Sites and Control of Development Act 1960

site for 36 static caravans for holiday purposes only, restricted to occupiers aged 45 years and over.

The Proposed Use in Comparison with the Existing Use – the Materiality Argument

26. In order to assess the materiality of any change of use, it is necessary to establish the appropriate planning unit. There is no dispute that the planning unit relates to the whole of the caravan site/park. This does not include the land immediately to the east surrounded by the blue line on the appeal plan owned by the appellant within which is Acorn Farmhouse itself, but it does include the eastern land on which the site's toilet block is situated.
27. The proposed use of the site as a caravan site/park would be the same as the existing use. I understand that only four of the static caravans have to date been installed on the concrete plinths which have existed on the site since 2019. But there is no dispute that the remaining 32 could be brought onto the site and installed on the other concrete bases, as per the Caravan Site License. In any case, irrespective of the current layout of the concrete plinths and the Site License, there are no planning controls (via conditions attached to implemented permissions) that limit the types, sizes, or numbers of caravans on the site or their layout provided they comply with the legal definition of a caravan.
28. Intensification of an existing use can, but will not necessarily, amount to a material change of use: what is at issue is whether the extent and nature of the change amounts to a change in the character (my emphasis) of the existing use. It is important to be clear that what is to be compared, in deciding whether there would be a material change of use, is the present use (rather than any notional use which may theoretically be possible without the need for a further grant of planning permission) and the proposed use.
29. It appears most likely that the 36 static caravans as set out on the plan attached to the Site License will be installed. But whether these 36 or a greater number in some alternative layout are installed, my assessment of whether there would be a material change of use is based simply on whether I consider the use of the caravan park for permanent year-round residential occupation would amount to a change in the character of the use, for good or ill.
30. I accept that there will be no amenity land on the site. I accept that holiday occupation means, in theory, that all the caravans could be occupied every day of the year – because different holiday occupiers could stay in each one at different times with no in-between vacancy periods. I accept that the static caravans would each be likely to have their own gardens bounded by hedges or fences and each could or would have its associated domestic garden paraphernalia just like a permanent home occupied by a family or single person. All the caravans could be occupied as second homes and rented out either by the appellant, or, if they had been sold to private owners, let out by them on AirBnB or similar letting websites. I accept that they could be used as 'party houses' – for instance let out to groups of young people who may cause nuisance by anti-social noise and drunkenness.
31. I accept that permanent residents of the static homes would, like holiday occupants, also use local pubs, restaurants and local facilities such as cleaners, plumbers, and electricians. Second homeowners may spend a lot of their time in their second homes and to some extent become part of the local community.

32. However, allowing permanent residential use of the static caravans would mean that occupiers would treat them as their permanent homes and consequently live in them for the vast majority of the year without any breaks. That is very different to holiday accommodation, which tends to be mainly occupied at traditional holiday times of the year like summer, Easter and Christmas and when the weather is favourable, and less so at other times.
33. Caravans used as holiday accommodation are likely to have much longer periods of absence than permanent homes, and this would have a large impact on the character of the site. It would be used far more intensively. Whilst the holiday occupancy of the site may mean that it is intensively used at certain times of the year, the certainty is that it would have the same intensive use for all of the year, including in terms of traffic movements, if it was used as occupiers' permanent homes.
34. Holiday occupiers generally eat out more than permanent residents and pay more visits to local tourist attractions – for the simple reason that they are on holiday and have more time and inclination to do so. Although the Site License restricts occupation of the site to those aged 45 and over, this would still include people who would go out to work if they were permanent residents, which would clearly not be the case for people on holiday. Workers tend to leave home early in the morning and return in the late afternoon whereas tourists/holidaymakers would not exhibit such a pattern of comings and goings. In any case, this age restriction of the Site License could be changed in the future allowing any age of person to live at the site permanently.
35. Permanent residents would demand services such as doctors, dentists, other health services, social services and education including school places that holidaymakers would be unlikely to need on a regular basis. This could place demands on the local GP practice and the adjacent primary school. Permanent residents would need access to recreation land including the adjacent playing field, which holidaymakers would have less need for, particularly if their holiday was only for a short time.
36. It is unclear how refuse storage and collection would work if the site was solely occupied for holiday accommodation, but it would be likely to be managed differently by the appellant than if the site contained permanent homes. That is because permanent residents would have regular refuse collection days and times and would be familiar with these, which would not be the case for temporary holidaymakers.
37. Although holidaymakers may order on-line deliveries, I anticipate that permanent residents would attract more on-site deliveries, simply because more people would be permanently living on the site and have more numerous demands for their permanent homes. Permanent residents would be more likely to put garages, sheds, barbecues, bike stores and other domestic outbuildings on their sites than holiday occupiers, simply because they require more permanent storage space for their possessions. Permanent residents would be likely to spend more time establishing and improving their domestic gardens than holidaymakers would.
38. For all these reasons I conclude that the use of the caravan park for permanent year-round residential occupation would amount to a material change in the character of the use, for good or ill. In concluding this I have had reference to

the two allowed LDC appeal decisions cited by the appellant.⁶ But I have explained above why there would be a material change of use here.

Other Matters

39. The appellant raises another issue. It argues that the 2017 LDC makes no reference to the holiday occupancy condition (Condition 3) on the 2014 planning permission. It only mentions Condition 4, the condition requiring the owner of each lodge to keep a record of all persons who have occupied it for holiday purposes, such records to be made available to the LPA upon its written request. It argues that consequently, with reference to the *Lambeth* case⁷, there is no extant holiday occupancy condition.
40. That argument makes no sense. The 2017 LDC's referral to Condition 4 implies, simply by its wording, that a holiday occupancy restriction is in force. It states: *"Upon commencement of the use hereby approved the owner of each lodge shall keep a record of all persons who have occupied the lodge for holiday purposes including details of the duration of their stay on the form attached. Such records shall be kept on the attached form and made available for inspection by the LPA upon prior written request."*
41. The Reason given for this condition states: *"To enable the LPA to ensure that the premises are occupied strictly in accordance with the restrictions imposed."* What are these restrictions? They are clearly the holiday occupancy restrictions referred to in Condition 3 of the 2014 permission. Otherwise the reference to Condition 4 and the wording of the 2017 LDC would make no sense. It is also the case that the wording of the first schedule of the LDC states: *"Use of land for the siting of static caravans for twelve months of the year, for the purpose of holiday accommodation only"* (my emphasis).
42. Rather than supporting the appellant's immediate argument, Section 193(5) of the Act on the contrary makes clear that: *"A certificate under section 191 or 192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate."* The 2017 LDC makes clear that the holiday occupancy restriction (and therefore condition) still applies.
43. In any case, as I have indicated above, whether or not the 2014 permission is valid is immaterial because, if it isn't, the site is still restricted to holiday occupancy by Condition 1 of the February 2003 permission.

Conclusion

44. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land for the siting of static caravans for twelve months of the year 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.

Nick Fagan

INSPECTOR

⁶ APP/U1240/X/16/3152283 & 17/3179428 – the Matchams decisions, and APP/X1118/X/19/3231022 – the Europa Park, Woolacombe decision

⁷ *Lambeth LBC v SSCLG & Others* [2019] UKSC 33

APPEARANCES

FOR THE APPELLANT: Michael Rudd of Kings Chambers instructed by Ben Eiser.

He called

Ben Eiser BSC(Hons) MA PG Dip MRTPI

FOR THE LOCAL PLANNING AUTHORITY: Peter Wadsley of St John's Chambers, Bristol instructed by the Solicitor to Torridge District Council (TDC).

He called

Kristian Evely, Principal Planning Officer, TDC

INTERESTED PERSONS:

Julie Genge LLB(Hons), LLM,
Solicitor (retired)

Local resident

DOCUMENTS

- 1 Caravan Sites License dated 15 August 2018, Conditions and Layout Plan
- 2 E-mail of 20 January 2021 showing Google Earth aerial photo with positions of the 4 existing static caravans annotated in red circles
- 3 Notification of Virtual Inquiry letter to local residents etc dated 5 January 2021
- 4 Latest appeal documents list received 19 January 2021
- 5 Opening Statement from Appellant
- 6 Opening Statement from LPA
- 7 Closing Statement from Appellant
- 8 Closing Statement from LPA
- 9 Bundles of judgements referred to by the parties, listed in the decision above