



Appeal Decision

Site visit made on 28 April 2021

by **N Thomas MA MRTPI**

An Inspector appointed by the Secretary of State

Decision date: 23 June 2021

Appeal Ref: APP/C1435/X/20/3257878

Bluebell Caravan Park, The Broyle, Halland BN8 6PH

- 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 R Cooper against the decision of Wealden District Council.
 - The application Ref WD/2019/0001/LDP, dated 30 December 2018, was refused by notice dated 26 May 2020.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of the land for the siting of forty caravans for the purposes of human habitation throughout the year.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the proposed use from the Planning Supporting Statement and the appeal form, as none was given on the application form. The Council has clarified that the additional wording given on its decision notice was included in error. The appellant has requested through the appeal that the words 'throughout the year' be added to the description of the development. It is clear from the evidence that the appellant was seeking a determination with regard to a proposed permanent residential use of the caravans as a person's main home. The additional wording adds clarity to the proposed use and I have therefore considered the appeal on this basis.

Background

3. The appeal site is within the open countryside, to the rear of a restaurant known as the Wok Inn, which was previously the Bluebell Inn. It is an irregular shaped area of land, accessed by a driveway which runs along the side of the Wok Inn, adjacent to a public byway. To the rear of the site is a public footpath. At the time of my site visit, material had been banked up across the driveway, restricting vehicular access to the site. It appeared that the site had not been accessible or in active use for some time. There were a number of static caravans on the site, but none appeared to be occupied and the site had an unmanaged appearance. There was no caravan on land identified as Plots 1

- and 2¹. There was however some indication of recent works on the site to put in place concrete hardstandings.
4. The land was originally granted temporary permission for use for 14 seasonal caravans in 1961². The permission was subject to two conditions. The first prohibiting use of the land as a caravan site outside of 1 April/Easter Thursday to 31 October each year, and the second making the permission temporary until 31 October 1971.
 5. In 1971 permission³ was granted for an extension to the caravan park to provide 15 additional caravans. This was subject to a similar condition preventing occupation between October and March (condition 2), and requiring a scheme of landscaping for the existing and proposed caravan site to be submitted and approved, and thereafter carried out within 1 year of the commencement of the development.
 6. In 1972 permission⁴ was granted for 'Retention of 20 caravans rear of Bluebell Inn, Shortgate, Laughton'. Condition 1 repeated a similar restriction with regard to occupation, as well as a condition referring to the landscaping condition on the 1971 permission.
 7. On 15 July 2016 permission⁵ was granted for 'Variation of condition to allow 365 day usage for one mobile home within existing caravan park. Mobile home on Plots 1 & 2, Bluebell Holiday Park, The Broyle, Shortgate, BN8 6PH'. The permission was subject to Condition 3, which refers to the remaining 27 caravans/pitches. The permission therefore positively allows for 29 pitches in total and 28 caravans. The accompanying site location plan showed a red coloured application site close to the entrance to the site, with the rest of the land edged in blue. The appellant states that the permission has been implemented, although at my site visit there was no caravan on Plots 1 & 2. I also note that the Parish Council has stated that the manager's accommodation burned down in 2017 and it seems that no attempt has been made to clear and reinstate the accommodation.⁶

Reasons

8. In an application for an LDC, the onus is on the appellant to provide all the relevant information and evidence to support their case. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
9. The parties agree that the historical permissions provide for the use of the land as a caravan site, subject to various conditions. The permissions specify the number of caravans in the description of the proposal. The appellant's case is that the 2016 permission controls the use of the site and does not restrict (a) the number of caravans, and (b) the caravans can be occupied on a 12-month basis (hence permanently for the purpose of human habitation). Condition 3 of the 2016 permission can control the period of occupation of 27 caravans/pitches for holiday occupation only as long as they are provided in the layout approved in the block plan with the 2016 permission. Should 40

¹ As identified on the plan accompanying permission ref WD/2016/0604/FA

² K/1961/1009

³ Ref K/71/684

⁴ Ref K/60/1379

⁵ WD/2016/0604/FA

⁶ Comments from Laughton Parish Council summarised in the Officer report dated 26 May 2020

caravans for the purposes of human habitation throughout the year be stationed on the land in a different layout, Condition 3 would not, as established by *Cotswold Grange*⁷ and other case law, be capable of controlling the nature or occupation of any of these caravans. Only a register of the addresses of owners/occupiers is required by the condition.

10. Therefore, on 30 December 2018, it would have been lawful to site 40 caravans on the land for the purposes of human habitation. The Council considers that the occupation of the caravans, with the exception of the manager's accommodation, is restricted to holiday accommodation, by condition 3 of the 2016 permission. However, the Council agrees that the permission does not restrict the overall number of caravans.
11. The information before me indicates that the various permissions for the use of the site as a caravan park were not subject to any conditions limiting the number of caravans. It appears likely that the 20 caravans permitted by the 1972 permission were in addition to the 15 permitted by the 1971 permission. The 2016 permission refers to 27 caravans/pitches in addition to the manager's mobile home on plots 1 and 2 in condition 3.
12. The 2016 application sought the 'change of usage from 1 April to 31 October to 365 day usage for one mobile home (in situ) for manager.' The form made reference to varying condition 2 of K71/684. Taking into account the wording of the permission, and the extraneous material in the application form which is incorporated into the permission by the wording of the grant of permission and condition 5, it is clear that the intention was to remove the seasonal limitation on the occupation of the one specific caravan on plots 1 and 2. In granting the 2016 permission, the Council granted permission for the use of the land as a caravan site with a new set of conditions, with condition 2 replaced with condition 3 to allow year round occupation of plots 1 and 2.
13. Condition 3 of the 2016 permission has three limbs. Part (i) establishes the use of the mobile home on plots 1 and 2 to be occupied by the warden/manager of the holiday caravan business. It goes on to state that the remaining 27 caravans/pitches shown numbered as pitches 3-6, 9-12 and 14-32 on the approved block plan shall be occupied for holiday accommodation purposes only. Part (ii) of the condition states that these caravans shall not be occupied as a person's sole or main place of residence. Part (iii) requires an up-to-date register to be maintained of the names of all occupiers of individual caravans on the site and their principal/main home addresses.
14. While condition 3(i) seeks to control the occupation of the 27 remaining caravans/pitches, the permitted use of the land is as a caravan site. The condition does not state that the caravans/pitches shall only be sited in the numbered pitches, or that the layout shall be retained. It does not restrict the number of pitches. Condition 3(ii) states that 'these' caravans shall not be occupied as a person's sole or main place of residence. This refers back to the 27 caravans/pitches, but as it does not control the layout or the number it does not control the occupation of other caravans/pitches that are not the specified caravans/pitches. Condition 3(iii) does not refer back to the 27 caravans/pitches and therefore the register must include the names and principal/home addresses of all the occupiers. However, it does not state that

⁷ *Cotswold Grange Country Park LLP v SSCLG & Tewkesbury DC* [2014] EWHC 1138 (Admin); [2014] JPL 981 which refers to *Forest of Dean DC v Secretary of State for the Environment* [1994] EG 138 (CS)

the principal/home addresses cannot be on the appeal site. It is clear from the reason for condition 3 that the intention was to prevent permanent residential occupation. However, the wording of the condition does not achieve this, and I disagree with the Council's view that it is implicit in the condition that the caravans must not be used for permanent residential occupation.

15. I agree therefore that the permission is not subject to any condition that would prevent other caravans from being brought onto the site, to be sited on different pitches, and occupied all year round. If implemented, the 2016 permission is incompatible with the earlier permissions, as condition 3 contradicts the seasonal occupancy conditions of the earlier conditions, by not including a period when the caravans cannot be occupied. It is therefore the relevant permission for determining the lawful use of the site. However, that is not the end of the matter.
16. A purpose of a planning condition is to allow the local planning authority to control changes that are not material. Case law⁸ has established that, where there is no condition or enforceable limitation restricting the number of caravans on a site or their occupation, the issue for the Inspector is whether the proposal would or would not constitute a material change of use.
17. It has also been established by case law, that when considering whether a change of use is material, it is appropriate to have regard to the existing use, rather than a notional permitted use which could theoretically be possible without any further grant of planning permission. It is not therefore necessary or appropriate to attempt to establish the full extent of what could, in theory, be done within the terms of the existing planning permissions. The issue is whether there would be a material change in the definable character of the land as a result of the proposed use of the site for 40 caravans for human habitation, when compared with the existing use of the site.
18. There is no dispute that the planning unit is the area of land outlined in red on the plan accompanying the LDC application. The proposed use would not be of a different type to the existing lawful use, in that it would still be a caravan site. I also acknowledge that individual caravans and pitches could be re-sited without breaching condition 3 of the 2016 permission. Indeed, the indicative layout provided with the LDC application indicates that the 40 caravans would be arranged in a different layout to the 27 pitches/caravans referenced by condition 3(i) of the 2016 permission. However, the intensification of an existing use can amount to a material change of use. What is at issue is whether the extent and nature of the change amounts to a material change of use, as a matter of fact and degree. The appellant's view is that there is no baseline number of approved caravans, with caravans permanently sited, screened by mature trees and landscaping as well as vehicular traffic resulting from the use of the caravans on a 12 month basis, and that therefore there is no need to consider if such a change is material.
19. I saw on my site visit that there had been some recent works on the site, with what appeared to be the formation of several concrete hardstandings. Caravans are clustered towards the northern part of the site, apparently to allow the recent works to take place. It is not clear whether these changes took place before or after the submission of the LDC application.

⁸ See *Cotswold Grange* which refers to *Forest of Dean DC v Secretary of State for the Environment* [1994] EG 138 (CS)

20. The site plan, that is stamped with the reference WD/16/0604 and shows the numbered plots, indicates that caravans have been confined to the central part of the site, the area alongside the public byway that runs to the east of the site, and the area to the rear of the Wok Inn. A roughly triangular area to the southern and eastern part of the site and a smaller area to the north of the triangle are shown to be open, and that is largely what I observed on site. A significant part of the site therefore has an open and undeveloped character.
21. The submitted indicative layout shows that the entire site would be laid out with caravan pitches, including the existing open parts of the site, which would allow spacing between caravans for parking, access and some amenity space. This would result in a significant change to the appearance of the open areas, so that they would appear similar to the existing more intensively laid out parts of the site, with potentially large caravans, access road and parking to serve each of them, ornamental planting, security lighting and other domestic paraphernalia, and year round use. This would fundamentally change the appearance of the site. The change would be particularly noticeable in views from the public footpath which runs along the southern edge of the site, as well as from the public byway to the west. It would appear as an extension to the site in visual terms, that would result in a much more domestic appearance to the site, affecting the rural character of the area.
22. The proposed use would be for 40 caravans for human habitation on a permanent basis across the site. It would generate a steady level of activity throughout the year. Even the parts of the site that are currently laid out with caravans would change from holiday caravans to year round occupation as permanent dwellings. It would be reasonable to assume that the existing use was intensive during the holiday period, but even without a seasonal restriction this is likely to be less intensive during the winter months. Holiday use may also give rise to a large number of comings and goings when in use, as visitors make trips to nearby attractions and facilities. However, during the winter months it is likely that the use was much less intensive.
23. Overall, the pattern of movements to and from the site would be likely to change significantly. While permanent residential occupiers may make trips during the day, the majority of trips are likely to be during morning and evening rush hours, when residents leave to attend school or work. There would also be more visits by delivery vehicles, for post, groceries, online shopping etc, as well as social calls. Due to the location of the site, the majority of movements to and from the site are likely to be by motor vehicle. While this may not be a highway safety issue, it would be a marked change to the existing situation.
24. The changes described above would bring about a substantial and fundamental change in the character of the use of the appeal site. As a matter of fact and degree, the proposed use would bring about a definable change in the character of the use made of the land. I therefore find that the appellant has not demonstrated that no material change of use would take place. The appellant has not discharged the burden of proof with regard to the lawfulness of the proposed use.

Conclusion

25. While I agree that there are no conditions on a planning permission that limit or control the number of caravans or the occupation of caravans on the site, I

have found that the proposal would result in a material change of use. Planning permission is therefore required.

26. For the reasons set out above, and although not for the reasons stated by the Council, I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land for the siting of forty caravans for the purposes of human habitation throughout the year 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.

N Thomas

INSPECTOR