The Planning Inspectorate

Appeal Decision

Site visit made on 12 July 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 3 August 2021

Appeal Ref: APP/Q3305/X/21/3273377
Haybridge Farm, Wells Holiday Park, Haybridge Hill, Haybridge, Wells BA5 1AJ

- 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 Wells Holiday Park Ltd against the decision of Mendip District Council.
- The application Ref 2021/0187/CLP, dated 11 January 2021, was refused by notice dated 11 March 2021.
- 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 'Replacement of existing touring caravans for static caravans'.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Procedural Matters

2. I have taken the description of the proposal from the appeal form, since no detailed description was given on the application form itself.

3. The number of existing touring caravans and proposed numbers of static caravans were not specified in the application or appeal documents. As such, and in view of the importance of precision in applications for a lawful development certificate (LDC), the parties were asked to agree the numbers of touring caravans existing and number of static caravans proposed. The agreed number for the existing touring caravans was 56 and the agreed number for the proposed static caravans was 40.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

5. Section 192 of the Town and Country Planning Act 1990 (1990 Act) states that if a person wishes to ascertain whether any proposed use of buildings or other land is lawful, they may make an application to the local planning authority for a certificate of lawful use or development.

6. In a LDC appeal, the onus of proof is firmly upon the appellant to make their case on the balance of probabilities. The appellant needs to show that the proposed development would have been lawful at the date of the LDC application. My decision is made upon relevant facts, legislation, and judicial authority - planning merits are not relevant.

Proposal

7. The description of development in the appeal form states the proposal as 'the replacement of existing touring caravans for static caravans'. It has been confirmed that the existing 56 touring caravans on site are proposed to be replaced with 40 static caravans. It is clarified also in the application documents that the intention is for the siting of static caravans to be for holiday accommodation purposes.

Background

8. The appeal site forms part of Wells Holiday Park, which has a fairly detailed planning history, which I do not recite in full here. The relevant planning permissions are:

   Permission granted in 1989[1] for a 'Touring caravan site, including new toilet and shower block. Alterations to existing entrance'. There are no conditions on this permission which control either the type of caravan that can be sited on the land, nor the number of caravans which can be so sited. Condition 5 of the 1989 Permission imposes a limitation that the occupation of any one caravan on the site shall not exceed 31 days with no return within the following 31 days by the previous occupiers.

   Permission granted in 2009[2] for 'Erection of 22 holiday lodges and construction of roadways (including retention of 39 touring caravan pitches)(outline with access, landscaping, and layout to be determined at the outline stage)'. Condition 6 states that 'The holiday lodges hereby approved and any caravan shall not be occupied other than for purposes of holiday accommodation and shall not be occupied by the same person(s) for more than 31 days in any calendar year, or such other period as may be first approved in writing by the local planning authority, in accordance with written records of occupancy to be available for inspection by the local planning authority at any time'. Again, there are no conditions restricting the numbers or type of caravans permitted on the site.

   Permission granted in 2010[3] for Variation of Condition 6 of planning approval 104293/013[4]. Condition 6 of the 2010 Permission then states that 'The holiday lodges hereby approved shall not be occupied other than by tourists (see definition in note 4 below) which is not their sole or main place of residence in accordance with written records of occupiers, addresses of their sole or main place of residence and purpose of occupancy that shall be made available for inspection at all reasonable times to the local planning authority'. Note 4 states that tourists is defined as the activities of persons travelling to and staying in places outside their usual environment for not more than one consecutive year for holiday business or leisure purposes.

[1] Reference 104293/004 (the 1989 Permission)
[2] Reference 104293/013 (the 2009 Permission)
[3] Reference 2010/1814 (the 2010 Permission)
[4] i.e. the 2009 Permission

9. The Council has indicated that it agrees with the appellant's position that, per the *I'm Your Man*[5] judgment, since the type of caravans which can be sited on the land has not been controlled by condition, the application description alone cannot limit the use of the land to touring caravans only. In any case, the key issues to be determined as regards the proposed use are whether there would be a change in the character of the use and if so, whether that change would be material.

10. It should be noted that the Council also submits that static caravans are considered to have sufficient characteristics of permanency through fixing to the ground and installation of utilities to be considered building operations for which planning permission would be required. However, since the application for a LDC is for a use only, it would not benefit the appellant if they were to undertake operational development.

Whether a material change of use

11. In order to assess the materiality of any change of use, it is necessary to firstly identify the appropriate planning unit. The appellant submits that the correct planning unit is the whole of the holiday park. The Council does not identify what it considers to be the correct planning unit but does not dispute the appellant's assessment.

12. On the evidence before me, the unit of occupation would appear to be the entire holiday park and no smaller area has been identified which is physically separate and distinct and/or is occupied for different and unrelated purposes. As such, the whole holiday park represents the appropriate planning unit in this case.

13. The Court of Appeal judgment in *Hertfordshire*[6] makes it clear that use of land for the same general description of use (e.g. a 'caravan park') can result in a material change of use. The key assessment is whether there is a change in the definable character of the use, and whether any such change is material.

14. In assessing whether or not there would be a material change of use, the proper comparison to be made is between the present use (as opposed to a notional use which may theoretically be possible without a fresh grant of planning permission), and the proposed use.

15. The Council submits that static caravans would be of greater scale, massing, and permanence than touring caravans and would be of a different appearance to touring caravans, with touring caravans also being easier to move from the site. It is submitted that there would be a change in the character and use of the land on this basis. The appellant points to the fact that there are other static caravans sited in the holiday park and highlights also that touring caravans can now be fairly large in size, and that touring caravans are permanently sited on the appeal site. An appeal decision from 2017 is cited in support of the appellant's stance[7].

[5] *I'm Your Man Ltd v SSE & North Somerset DC [1999] 4 PLR 107*

[6] *Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal and Waste Recycling Ltd [2012] EWCA Civ 1473*

[7] Ref APP/U1430/X/16/3164696

16. Touring caravans and static caravans are not separately defined in legislation and as such, whilst having some differences in terms of size and physical appearance, both are 'caravans' as statutorily defined. I also observed at my site visit that the touring caravans that were sited on the land had been placed upon numbered permanent bases, with some of these having various domestic paraphernalia positioned alongside them, which lent them an air of permanence similar to that of the static caravans present on site. Indeed, there were a number of static caravans already present on the site, including some on approach to the area designated for touring caravans.

17. Taking all of these factors into consideration, I find as a matter of fact and degree and on the evidence before me, that there would be no definable change in the character of the use if 56 existing touring caravans were to be replaced with 40 static caravans used for holiday purposes.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the replacement of existing touring caravans for static caravans was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

V Bond

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 January 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

It would not have represented a material change of use within section 55 of the Town and Country Planning Act 1990 as amended and would not have contravened the requirements of any enforcement notice in force.

Signed

V Bond

INSPECTOR

Date

Reference: APP/Q3305/X/21/3273377

First Schedule

Replacement of 56 existing touring caravans with up to and including 40 static caravans for holiday accommodation purposes in accordance with details contained in application reference 2021/0187/CLP.

Second Schedule

Land at Haybridge Farm, Wells Holiday Park, Haybridge Hill, Haybridge, Wells BA5 1AJ

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated:

by V Bond LLB (Hons) Solicitor (Non-Practising)

Land at: Haybridge Farm, Wells Holiday Park, Haybridge Hill, Haybridge, Wells BA5 1AJ

Reference: APP/Q3305/X/21/3273377

Scale: Do not scale