



Appeal Decision

Inquiry Held on 19 August 2021

No site visit was necessary

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 10th September 2021

Appeal Ref: APP/D0840/X/21/3234165

Sun Valley Park Ltd, Pentewan, St Austell PL26 6DJ

- 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 Sun Valley Park Ltd against the decision of Cornwall Council.
 - The application Ref PA19/00739, dated 28 January 2019, was refused by notice dated 26 March 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The proposed use for which a certificate of lawful use or development is sought is the siting of caravans for the purposes of human habitation including as a person's sole or main place of residence.
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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 considered to be lawful.

Reasons

2. The main issue in this case relates to whether the decision to refuse the LDC was well founded and, in particular, to which planning permission controls the use at the site, and whether any subsequent permissions have an effect on that permission.
3. There is a long planning history relating to the site commencing in the 1960s. The first permission was in April 1961 [C/SAU/61/14884] for land as a caravan site with a small number of pitches and there were conditions that effectively limited it to a touring site and holiday use. A second permission was granted in October 1961 [C/SAU/61/16393] for use of the land as a caravan site, but with a greater number of pitches with various conditions effectively limiting it to a touring caravan site and holiday use.
4. The Council say this is the base permission for the site. It had, amongst others, condition 4 that required planning permission to be obtained for suitable roads, accesses and toilet blocks on or in connection with the site and for it to be implemented, and also a layout showing the position of the pitches. That application was granted permission. Condition 4 itself did not actually require the layout to obtain planning permission, but approval. The planning permission [16393] was granted in October and only two weeks later an

application C/SAU/61/16671 was made for the caravan site layout and convenience block on the land. This was approved and the appellant relies on this as being the base permission at the site. There were no conditions attached to the planning permission.

5. In simple terms the interpretation of a planning permission has to be based on the 'four corners' of the planning permission. This includes looking at things such as any plans accompanying the permission and other such matters. Where there is some ambiguity in the interpretation *Kemball v SSCLG* [2015] EWHC 3338 (Admin) and *University of Leicester v SSCLG & Oadby & Wigston BC* [2016] EWHC 476 (Admin) indicated that in order to resolve ambiguity on the face of the planning permission, it is permissible to look at extrinsic evidence including, but not limited to, the application form and other documents, depending on the circumstances of the individual case.
6. The permission when read alone is not ambiguous, but even so, there is no evidence that directly relates permission 16671 to condition 4 of permission 16393. The Council identifies the large number of permissions that have been granted at the site over the years which have been consistent in their conditions and aim to limit use to holidays. The site in general has been used for holidays; the name of the site was Sun Valley Holiday Park.
7. We do not have evidence of the intentions of either the Council or applicant at the time the various applications were made. The appellant acknowledged the possibility that the parties involved were seeking the holiday accommodation that the Council say was intended in permission 16671, but there is nothing to indicate that this was or was not the case.
8. I consider that is a strong probability, given the history and continued use of the site, but there is nothing specific to link application 16671 and 16393, either within the application or extraneous to it. In *Lambeth LBC v SSCLG* and *Aberdeen Asset Management Nottinghamshire & HHGL Ltd* [2019] UKSC33 it was noted in summary that whatever the legal character of the document in question, the starting-point - and usually the end-point - is to find "the natural and ordinary meaning" of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense.
9. It was found that "taken at face value the wording of the operative part of the grant seems to me clear and unambiguous. The Council "hereby approves" an application for "the variation of condition as set out below ...". There then follow precise and accurate descriptions of the relevant development, of the condition to be varied, and of the permission under which it was imposed". In that case it is clear that the two permissions were directly linked. There is no such direct link in the current case in the description or permission.
10. The decision is clear on its face, there is no ambiguity in that it is for the caravan site layout and convenience block and the accompanying plans support this. The Council suggest that the use of the words 'the layout' in some way excludes use and links it back to condition 4 of permission 16393. I think the term 'the layout' as used in the permission is straightforward and is identified on the plans. It is also clear in Section 75 of the Town and Country Planning Act (and that before it) that a permission for operational development, whether or not directly stated, allows the use of that development for the purpose for which it was designed. A separate permission is not required for use.

11. I agree with the Council that if the whole history is before you, the use of the site appears to have been mainly for holiday purposes from the very beginning and this may well have been the intention of the parties. However, holiday use is acceptable within planning permission 16671 as is the use the appellant proposes. Although this is materially different from the holiday use, it remains consistent with the permission. I imagine at the time the Council took it to be made in response to condition 4 and did not appreciate the need for conditions on the new permission. However, looking at planning permission 16671 without the remainder of the history, the link is not evident.
12. The appellant also maintains that the plan attached to permission 16393 shows cross hatching where caravans can be sited and that the later permission is different. In my view there is little difference, particularly if the pitches that have obviously been crossed out are ignored. I consider that the relationship is reasonable between the plans, which are obviously not precisely marked up, but are to a reasonable accuracy. However, I do not consider that this makes any difference either for the Council or appellant.
13. The interpretation of a planning permission is ultimately a matter for the courts, and whether timing and history and possible intentions can be taken into consideration. As I understand the current interpretation, I conclude that planning permission C/SAU/61/16671 is a stand alone permission and can be considered as the base permission for the current use.
14. The question then arises as to whether any later permissions were so different that they would take over from the previous permission. The appellant cites the case of *Newbury DC v SoS for the Environment* [1981] AC 578 (1980). This notes that the only circumstances in which existing use rights are lost, by accepting and implementing a later permission, are when a new planning unit comes into existence and seldom applies to a change of use, and such change would need to be radical.
15. At all times, as far as I can see, the use has been mainly related to holidays. There was significant operational development undertaken through planning permission 89/20/01031/P. But the structure was an ancillary building to the holiday use and although there were also changes to the layout of the site, its use did not substantially change. At the same time one building was converted to flats and to my mind this would have created a different planning unit for those buildings and therefore a small reduction in the site's planning unit. But this is a de minimis change to the overall site and had no material effect on the caravan site use. I therefore consider under the Newbury principle that the later permissions would not have affected the base planning permission.
16. Other permissions made minor alterations to use, but again not fundamental changes that would affect the overall use. Later permissions allowed 10 new holiday units that were not classed as caravans, which again may have changed the planning unit to a small extent. However, this again was not a fundamental change to the larger unit of occupation, and I do not consider it changes the base permission. The appellant has requested this area of the land be removed from the LDC application.
17. Overall, I conclude that permission C/SAU/61/16671 is the base permission for the use.

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 use of the siting of caravans for the purposes of human habitation, including as a person's sole or main place of residence, 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.

Graham Dudley

Planning Inspector



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 28 January 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black on the plan attached to this certificate, would be within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use, in accordance with the unconditional planning permission 17605C dated 15 January 1962 would be lawful, and use rights granted by the permission have not been lost.

Signed

Graham Dudley

Planning Inspector

Date: 10th September 2021

Reference: **APP/D0840/X/21/3234165**

First Schedule

The siting of caravans for the purposes of human habitation, including as a person's sole or main place of residence.

Second Schedule

Land at **Sun Valley Park Ltd, Pentewan, St Austell PL26 6DJ**

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 /operation 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 10th September 2021

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Scale:NTS

