



Appeal Decision

Site visit made on 20 May 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 27 September 2021

Appeal Ref: APP/V2635/X/20/3263735

Land off Narborough Road, Pentney PE32 1JD

- 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 Pentney Bowls and Leisure Club against the decision of King's Lynn and West Norfolk Borough Council.
 - The application ref. 20/00678/LDP, dated 6 May 2020, was refused by notice dated 7 August 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - A certificate of lawful use or development is sought for the siting of static caravans for the purposes of human habitation (residential use) throughout the year.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application was made under s.191(1)(a) of the Act in order to authorise what is argued to be the existing use of the land as a residential caravan site. The appellant claims this use is lawful because the planning permission granted does not restrict or limit the way in which caravans may be used.

Background matters

3. Pentney Bowls and Leisure Club is a substantial site set in countryside surroundings in the small hamlet of Pentney, with access from Narborough Road. There is a car park and large social building past to the west of which is the long, roughly triangular appeal site.
4. In 2011 King's Lynn and North West Norfolk Borough Council (KLWNBC) granted planning permission for change of use of a field to a touring caravan park¹. That site, which is predominantly within the Breckland Council area, is immediately adjacent to the appeal site along its south-eastern boundary using the same access and is in the same ownership. There are a number of conditions on that permission relating to the time of implementation; development in accordance with the application plans; works to the access and laying out of a passing bay.

¹ Decision notice ref. 11/01363/F, dated 11 August 2011.

5. In the same year Breckland Council granted planning permission for the part of the same site owned by the club² for the same purpose. This is subject to conditions, including Condition 4 which precludes the use as a touring caravan site between the end of October one year and the beginning of April the following year.
6. In 2016 KLWNBC granted a further planning permission for the change of use of an extension to the existing touring caravan park³. This permission relates to the current appeal site and is subject to conditions on the time of implementation; development in accordance with the application drawings; development to be in accordance with the recommendations of a Flood Risk Assessment, and submission of a Flood Plan. There is no condition controlling periods of use.
7. It is not clear from the location drawings in either the KLWNBC or Breckland 2011 planning applications where the boundary between the two Council areas lies. However, in their final comments in this appeal the Council explain that in the 2011 permission the only part of that site within their administrative boundary is the access from Narborough Road that runs across close to the northern boundary of that south-eastern site. The remainder of that site is within the Breckland Council administrative area. This situation was explained fully to me on the visit.

Reasons

8. For the avoidance of doubt, I should explain that in the context of an appeal made under section 195 of the Act, which relates to an application for a lawful development certificate, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider. My decision will rest on the facts of the case, and on relevant planning law and judicial authority.
9. In a LDC appeal the main issue is whether the Council's decision to refuse to grant a LDC was well-founded. Government guidance advises in cases of this type that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability⁴.
10. The judgement in the High Court case of *I'm Your Man*⁵ establishes that any restriction on use following implementation of a planning permission must be imposed by way of conditions, and a condition cannot be implied. However, in *I'm Your Man* the court were considering a case where the permitted use had originally been a temporary use imposed by condition, but it was found that the permitted and proposed uses were essentially the same albeit the latter had no such condition. It may not be good law in cases where there may be a material change of use between that permitted and that claimed to be lawful.
11. The appellant refers to a judgement in *Lambeth v SSCLG* where it was determined that a condition must be 'clear and unambiguous'. The appellant

² Breckland Council decision notice ref. 3PL/2011/0725/CU, dated 17 October 2011.

³ KLWNBC decision notice ref. 16/01330/F dated 27 July 2016.

⁴ Planning Practice Guidance – 'Lawful Development Certificates' Paragraph 006 Reference ID: 17c-006-20140306.

⁵ *I'm Your Man Ltd v Secretary of State for the Environment* [1999] 77 P&CR 251.

does not identify in which court this judgement was given, but the case was finally heard in the Supreme Court in 2019⁶, and correctly expresses the law as it has stood since handing down of that judgement. This case includes the endorsement and adoption of the view taken by the leading judge in *Trump International Golf Club*⁷. That is, in interpretation of a condition, 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 used, viewed in their particular context (statutory or otherwise) and in the light of common sense (my emphasis).

12. In the light of these cases the principal questions here are, first whether the use for siting static caravans for the purposes of human habitation – that is, residential use - throughout the year is limited by existing planning permissions and their conditions, and a subsequent LDC granted in 2019⁸. Second, if that is the case, does the claimed use result in a material change of use of the site?
13. The application for the 2019 LDC was supported by Counsel's opinion provided to the appellant that there were no restrictions or limitations on the planning permissions regarding the type of caravans, their use or periods of use. This was contrasted with the Breckland Council planning permission, which includes Condition 4 that clearly restricts the period during which the touring caravans may be used in any year and requires their removal outside the permitted periods.
14. Reading the KLWNBC permissions it is apparent there are no time-limiting conditions, and it might be concluded that no restrictions can be imposed on static caravans. However, bearing *Lambeth* in mind, and considering the word 'touring', the Oxford Shorter English Dictionary gives a common meaning for 'tour' as '*making a tour or circuitous journey in which many places are visited, for recreation or business*'; and a tourist as '*one who makes a tour, especially for recreation*'. I take from this that a touring caravan should be seen as one that is used for such journeys. To my mind, in this context and in the light of common sense, the use of the site for the siting of touring caravans is an accurate functional description of what is permitted on the site and does not require a condition to put a restriction or limitation on this aspect.
15. I appreciate that the appellant made this LDC application on the basis that the use is an existing use, rather than a proposed use under s.192(1) of the Act. However, it is now for me to determine whether the use for the siting of static caravans for the purposes of human habitation can be regarded as included in the description of the permitted use as a touring caravan park. Although there is no restriction on periods of use, can both touring caravans and static caravans both be regarded as the same in legal terms?
16. S.29(1) of the Caravan Sites and Control of Development Act 1960 as amended sets out that a caravan means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. S.13(1) of The Caravan Sites Act 1968 as amended (the 1968 Act) defines a twin-unit caravan as a structure designed or adapted for human habitation which is, (a) composed of not more than two

⁶ *London Borough of Lambeth v SSHCLG and Others* [2019] UKSC 33.

⁷ *Trump International Golf Club Ltd v Scottish Ministers* [2015] UKSC 74.

⁸ Decision notice ref. 19/00643/LDE, dated 8 April 2019

- sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b), when assembled it is physically capable of being moved by road from one place to another.
17. There is no distinction made between caravans that can be used for touring and caravans that may normally remain on sites but are capable of being moved. In this context I consider that static caravans - in the sense that they would normally remain sited in the same position - would come within the statutory definitions.
 18. However, might there be some other differentiation in planning terms? In my view, whether a caravan is a static residential unit or a touring caravan can reasonably be discerned through inspection and observation of their physical characteristics.
 19. To my mind the most significant possible differences between the two types relate to size and the manner of use. Touring caravans are typically towed by car and of a size that can be moved without causing any difficulties in terms of public highway interests. From my observations and experience in general a large touring caravan with say 5 or 6 berths would probably be no more than about 2.5 metres wide, about 8 metres long with an overall height of perhaps 2.7 metres. I saw that the caravans on the appeal site were clearly no larger than that.
 20. This compares with the significantly larger maximum size of a twin unit caravan such as the appellant might expect to be located on this site. This is defined in s.13(2) of the 1968 Act as 20 metres long, 6.8 metres wide and 3.05 metres high – a footprint of 136 square metres, that is equivalent in area to quite large single storey house, and many times greater than is likely for a large touring caravan. Such a caravan is moveable, but this is usually done on a low trailer towed by a tractor or lorry and may well require an escort on the public highway. It is improbable that a static caravan any larger than a large touring caravan would be used to make any sort of recreational or business tour.
 21. Overall, I consider that the potential differences between static caravans of larger sizes and touring caravans are, as a matter of fact and degree, of such significance that they should be regarded as different entities, and that the existing planning permissions and LDC do not encompass the siting of large static caravans such as could be the case on this site if this appeal were allowed.
 22. Of course the existing planning permission and LDC allow touring caravans to remain on the site permanently without ever being moved, unlike other touring caravan sites I have seen that require removal for certain periods every year. In that sense the present touring caravans could be regarded as static. On the other hand allowing this appeal and granting a LDC would permit any type of caravan of whatever size. The appellant would have free rein to choose, and clearly they might all become double unit mobile homes. With this degree of flexibility the future of the site in terms of character would become highly uncertain.

23. Although the merits of the case are not before me, and indeed there are no specific proposals on which to make such a judgement, I have to determine the question of whether the introduction of static caravans for permanent occupation would be likely to result in a material change of use of the appeal site. This is an approach endorsed in the High Court case of *Cotswold Grange*⁹.
24. The appeal site is in a countryside location, mainly open fields with many mature deciduous trees along their boundaries and along highway boundaries. There is a fine row of trees along the common boundary with the site within the Breckland Council district, and the site slopes very slightly down towards the south and the placid chalk stream the River Nar. There is little development nearby. The appeal site itself has about 40 stands for touring caravans, of which some 20-25 were occupied at the time of my visit and appeared spacious. Although the development plan is not relevant to a LDC case, I note that the area generally is classified as being within the countryside and it is indeed of a highly rural nature.
25. At present there are no large static caravans on either of the two sites, which largely retain their strongly rural character. While there are no planning restrictions on the periods of occupation or number of stands, this latter element is controlled to a great extent by the necessity to obtain caravan site licences. In my opinion, the possible bulk and size of static caravans, and the likelihood of other accretions on their stands might significantly alter the rural character of the site and surrounding area. Furthermore, mobile homes in permanent residential use might well have off-site effects, such as increased everyday traffic generation and possibly a greater demand for medical, educational and other services. In this relatively isolated location such changes could be unsustainable.
26. I have frequently seen twin unit caravans that have brick built surrounds concealing the wheels and undercarriages, and often have more or less permanent steps up to the entrance doors, possibly with a decked area as well. These are clearly static and it is not conceivable they could go on a tour. It is also likely that caravans occupied all year round would result in there being domestic paraphernalia such as waste bins, washing lines, and outdoor tables and chairs permanently placed on their stands. Irrespective of arrangements like that, caravans of such size, which might lawfully be placed on the appeal site are likely to have a significantly different impact on an area resulting from their bulk and overall appearance as compared with touring caravans. Such a change in character might well amount to a material change of use requiring an application for planning permission with its associated consultations..
27. The appellant suggests that the character of the Pentney Bowls and Leisure Club site is already compromised by the social building near the Narborough Road entrance. This is a utilitarian industrial type shed, standing in an extensive hard surfaced car park. While it is incongruous in this rural setting, it is some 300 metres from the appeal site at its closest and is screened by trees to the extent that it could not be seen from there and has no significant impact upon the character of the appeal site itself.
28. In the light of the foregoing I consider that the use of the site is limited by the planning permission to the siting of touring caravans. These can be distinguished from some larger static caravans. In this context the application

⁹ *Cotswold Grange Country Park LLP v SSCLG & Tewksbury Borough Council* [2014] EWHC 1138 (Admin).

for the siting of static caravans is remarkably unspecific and by no means sufficiently precise to justify the grant of a LDC. On the balance of probabilities their introduction for permanent residential use might amount to a material change to the permitted use that would require planning permission. It follows that the Council's decision to refuse the grant of a LDC was well-founded.

Conclusions

29. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the siting of static caravans for the purposes of human habitation (residential use) throughout the year at Pentney Bowls and Leisure Club on land off Narborough Road, Pentney PE32 1JD 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.

Stephen Brown

INSPECTOR