
Appeal Decisions

Site visit made on 13 October 2021

by P N Jarratt BA DipTP MRTPI

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

Decision date: 25 October 2021

Lookout Holiday Parks Ltd, Corfe Road, Stoborough, BH20 5AZ

Appeal A Ref: APP/D1265/W/21/3270527

- Appeal A is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr John Romans (Lookout Holiday Park) against the decision of Dorset Council.
- The application, Ref 6/2020/0225, is dated 5 May 2020.
- The development proposed is the variation of condition 6 of 6/2001/0929 to remove the restriction limiting the occupation of touring caravans and tents.

Appeal B Ref: APP/D1265/X/21/3276740

- Appeal B 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 John Romans (Lookout Holiday Park) against the decision of Dorset Council.
 - The application Ref 6/2020/0221, dated 5 May 2020, was refused by notice dated 24 February 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 the use of land for the siting of twin-unit lodges that fall within the statutory definition of a caravan.
-

Decisions

1. Appeal A Ref: APP/D1265/W/21/3270527: appeal dismissed.
2. Appeal B Ref: APP/D1265/X/21/3276740: appeal dismissed.

Procedural matters

3. In respect of Appeal B and for the avoidance of doubt, the planning merits of the existing use are not relevant when they are not there for an issue for me to consider in the context of an appeal under section 195 of the Town & Country Planning Act 1990 as amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority

The site and relevant planning history

4. The appeal site forms part of a caravan park comprising a mix of static units and fields for touring caravans, including associated infrastructure such as

- internal roads, toilet blocks and a laundrette. The appeal site is stated to be 0.3 hectares and forms part of Area D shown on the appellant's planning history plan (also referred elsewhere as field B), with the appeal site being the area in the southern part of Area D just beyond an amenities block.
5. The caravan site has an extensive planning history. Following temporary permissions first granted in 1979 for Area D, a permanent permission was granted (6/1982/0802) for 'Permanent use of land for 80 touring caravans/tents etc (relief from condition)' subject to conditions including:
- Condition 4: The site shall be operated as a touring caravan and tented camping site only and no caravans for sale shall be displayed thereon. No business of selling caravans shall be carried out without the prior express consent of the local planning authority.
 - Condition 5: The site shall not be used for the stationing of caravans and camping units between the 1st of November of each year and Easter of the succeeding year inclusive, and the site shall be kept clear of all camping units between these dates.
 - Conditions 6: Not more than 80 camping units shall be sited on the area of land at any one time during the period of Easter to 31st of October inclusive, and of these there shall be a maximum of 40 caravans.
6. Application 6/2001/0929 was approved for the 'Relief of condition 5 of PA 1982/0802 to use part of Field B (the northern two thirds of the site) all the year round for touring caravans and provide winter storage compound for touring caravans.' Condition 6 of 6/2001/0929 states that 'The use of the site shall be limited to occupation by touring caravans and tents for holiday purposes only and no caravan or tent shall be occupied under any circumstances on a temporary or permanent basis. The appellant is seeking to replace this condition in Appeal A.
7. An LDC (6/2019/0642) has been issued in relation to the land to the north of the appeal site confirming non-compliance with condition 5 of PA/1982/0802 such that the site can lawfully be used for touring caravans and tents all the year round.

Appeal A

8. In February 2021 the Council determined that the application in respect of Appeal A was invalid as the description of development refers to touring caravans therefore an application to remove the restriction relating to the site being used for touring caravans and tents only cannot be considered as a s73 application.
9. The main issue in Appeal A is whether the Council were correct in their assessment that the s73 application was invalid.
10. The description of development on permission 6/2001/0929 is set out above. The appellant seeks to remove the occupation limitation that only touring caravans and tents could occupy the site proposing that condition 6 should instead read 'The site should be limited to holiday use only'. Subsequent to the submission of the application, the appellant sought to amend the application to incorporate Condition 8 of 6/2001/0929 which states 'No caravans shall be sold from the site or displayed for sale from the site'.

11. In the Finney¹ case, the Court of Appeal held that an application under s73 may not be used to obtain a permission that would require a variation to the terms of the “operative” part of the planning permission this being the description of the development for which planning permission had originally been granted. The principles arising from Finney are:
- The description of development in an existing planning permission cannot be amended at all. Only the conditions can be varied;
 - The description of development specified in the decision is that taken from the original planning permission and not from the subsequent application to vary any of the conditions;
 - If amending a condition would result in a conflict between it and the description of development then that particular amendment is beyond the powers under s73 and cannot be made;
 - In any event, any amendment can only be made provided the new condition does not fundamentally alter the original planning proposal for which permission had been granted.
12. The appellant considers that the application was correctly and lawfully submitted under s73 and that the variations proposed are not inconsistent with the operative part of the controlling permission for this part of the Caravan Park. It does not change what has been approved from what has been applied for. Assuming the application to be valid, it is considered that given that the site can be used all year round and given the suggested alternative wording for the conditions retains reference to holiday use only, the status quo of the site as ‘holiday only’ would be maintained in so far as the use of the site is concerned.
13. In application 6/2001/0929 the description of development explicitly refers to the site being used for touring caravans (both for holiday use and the storage of touring caravans). This application was itself an application for relief from condition 5 of the original planning permission 6/1982/0802. The description of this original application also refers to the site being used for touring caravans. Condition 6 attached to planning permission 6/2001/0929 reinforces the permitted use of the site for touring caravans and also tents.
14. By varying conditions 6 to remove the requirement for the site to be restricted to use by touring caravans and tents would contradict the description of development and the definitional scope of what was granted planning permission. It is significant that touring caravans are explicitly referred to in the description. Had it been intended for the site to be allowed to be used for any unit that falls in the description of a caravan as so defined, the term ‘touring caravan’ would not have been included in the description of development. Given that it was, the application makes a distinction between touring caravans and static caravans/lodges. Varying condition 6 of 6/2001/0929 would contradict the intentionally worded description of development.
15. Whilst I have had regard to other matters raised by the appellant, including appeal decisions APP/A3010/W/17/3190814 and 3195196 in Retford I consider

¹ Finney v Welsh Ministers & Others [2019] EWCA Civ 1868

that the facts and circumstances of that case can be distinguished from those in this appeal.

16. Representations have been submitted by local residents and by the Parish Council although many of the comments made refer to the merits of the proposal which in view of my conclusion below, do not need to be considered further.

Conclusion

17. I therefore conclude that the application is invalid and the appeal therefore fails.

Appeal B

18. The main issue in Appeal B is whether the Council's decision to refuse to grant an LDC was well-founded. In order for an LDC to be issued it must be shown on the balance of probability that there are no restrictions on the type of caravan that can be placed on the appeal site. The onus of proof rests with the appellant.
19. The appellant contends that whilst Condition 4 of 6/1982/0802 requires that the site shall be operated as a touring caravan and tented caravan site only, it does not expressly restrict the type of caravan that can be stationed on site. The appellant states that the application seeks to demonstrate that the siting of static caravans for permanent human habitation would not result in a material change of use of the land, and would thus be lawful. It is pointed out that it is not unusual to find static caravans on touring sites.
20. In this appeal, it is not a matter of whether a material change of use would take place as a result of carrying out the proposal but a matter of whether in doing so would be in breach of condition. In considering lawfulness of the proposed development it is necessary to consider whether there are any conditions controlling how the areas are used. The appellant correctly states that the definition of a caravan under s29 of the Caravan Sites and Control of Development Act 1960 does not make a distinction between touring and static caravans. However, this cannot be relied on by itself to justify lawfulness as it fails to have regard to the conditions and descriptions of development which remain extant.
21. The appellant is critical of what is considered to be the lack of clarity in the wording of the condition, the reason for which was 'this permission relates to the use of the site as a touring and tent camping site only.' On the contrary, I consider that the wording is very clear and unambiguous in what is permitted – the site shall be used as a touring caravan and tented camping site only. Consequently it expressly excludes other caravan types including the stationing of static caravans. The use of the term 'only' indicates an exclusive use of the site. The second part of the condition expressly prohibits the sale of caravans on the site, adding an additional limitation to its use.
22. It is eminently clear to me that a twin-unit lodge is neither a touring caravan nor a tent, notwithstanding that it falls within the definition of a caravan and that a touring caravan is not statutorily defined, and falls outside the scope of the permission.

23. The appellant refers to case law in respect of the interpretation of a planning permission and in particular to the general rule that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions on it and the reasons for those conditions. These tests are satisfied in this case.
24. Appeal decisions have been referred to by the parties and these have been interpreted differently by the Council and the appellant. I am satisfied that whilst these cases are helpful, there appear to be material differences between them that are distinguishable from the facts in this case particularly in the nature of any relevant conditions.
25. Condition 6 of 6/1982/0802 limits the number of camping units to 80 at any one time during the period Easter to 31 October and of these there shall be a maximum of 40 caravans. I note that the Council consider it unlikely that the site could accommodate twin-unit lodges in excess of this number due to their size and licensing restrictions. However, this is of limited relevance to this appeal.

Conclusion

26. I find that the appellant has not shown on the balance of probability that the proposed use would be lawful. The siting of twin-unit lodges on the appeal site would conflict with the planning permission (6/1982/0802) for the permanent use of land for 80 touring caravans/tents etc (relief from condition) and be in breach of Condition 4. The issuing of an LDC would conflict with s193(5) in respect of compliance with any condition or limitation.
27. 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 use of land for the siting of twin-unit lodges that fall within the statutory definition of a caravan 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.

P N Jarratt

Inspector